Supreme Court, U.S.
FILED

No. 021390 DEC 24 200

In the Supreme Court of the United States

NICOLE LOREN et. al

Petitioner,

v.

CHARLES M SASSER JR
HERNANDO BEACH INC.
HERNANDO BEACH SOUTH
PROPERTY OWNERS ASSN et. al

Respondents.

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI
APPENDIX

Pro-se Litigant
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164 pp

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App .1

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No:99-2413-CIV-T 1X
Filed October 19,1999
COMPLAINT and
JURY TRIAL and
INJUNCTION RELIEF
REQUESTED

NICOLE LOREN ,BETTIE J . NEWBOLD)
and CHARLENE JANKE ,by and through)
VERONICA AGUIRRE ,)
Plaintiffs,)
vs.)
CHARLES M SASSER JR., HERNANDO BEACH)
INC., Profit Corp and HERNANDO BEACH SOUTH)
PROPERTYOWNER'S ASSN, INC., Non-Profit Florida
Corp)
Defendants.)
_____)

(Preliminary Statement)

1.This is a civil rights and housing discrimination action. Defendants claim deed restrictions bar a family from installing a fence and wheelchair ramp /deck roadside of their home for a blind and severely retarded member and her older arthritic caretaker sister. Between denial of their ramp requests, the sister fell down the front stairs. Feeling forced to move , Plaintiffs now face judicial enforcement of a deed restriction banning signs if they put a "for sale "sign on their home. They seek damages and declaratory relief over the handicap accommodation denial under 45 U S C &&3601 et. al seq .and Fla. Stat.& 760.20-760.37,and declaratory and injunctive relief over the sign ban under the 1st and 14 th Amendments and 42U.S.C& 1983.

App.2
(Jurisdiction)

2. The court has jurisdiction over this action under 28 U.S.C.&& 1331,1343,45U.S.C.&3613,and supplemental jurisdiction over the companion Florida housing discrimination claims under 28 U.S.C.&1367.

(Parties)

3.Plaintiff Nicole Loren("Loren")jointly owns and resides in a home in Hernando Beach South ,a deed -restricted community in Hernando County, Florida, and provides resident caretaker services for her handicap mother, and severely -handicapped step-aunt, Plaintiff Charlene Janke.

4. Plaintiff Bettie J .Newbold ("NEWBOLD")resides in a home in Hernando Beach South with her daughter LOREN and step -sister ,Plaintiff Charlene Janke, for whom she also provides caretaking.

5.Plaintiff Charlene Janke("JANKE") is the legal ward of NEWBOLD's daughter Veronica Aguirre("AGUIRRE"),a resident of Illinois .AGUIRRE jointly owns with her sister LOREN the home in Hernando Beach South where LOREN, NEWBOLD and AGUIRRE's ward ,Janke, reside. Loren and AGUIRRE provide shelter and care for NEWBOLD and JANKE who are handicapped and on limited incomes.

6. Defendant Charles M. Sasser Jr ("SASSER") is the President of Defendant Hernando Beach ,Inc., the corporate developer of Hernando Beach South ,and the person who interpreted and applied the deed restrictions for Hernando Beach South to deny Plaintiffs permission to install a fence ,ramp ,and small deck at their home in 1998,whick denial are the focus of this action.

7. Defendant Hernando Beach ,Inc ("CORPORATE DEVELOPER")is a Florida **profit corporation** which developer Hernando Beach South .CORPORATE DEVELOPER was the declarant of recorded deed restrictions governing Hernando Beach South and ,for the 1998 modification requests of Plaintiffs, ,the enforcer of those recorded deed restrictions.

8.Defendants Hernando Beach South Property Owners Association, Inc (ASSOCIATION)is a Florida **non profit corporation** and currently the entity with the authority to enforce ,amend or modify recorded deed restrictions governing Hernando Beach South .
The ASSOCIATION is the successor homeowners' association to the one which had been dissolved when SASSER and CORPORATION DEVELOPER denied Plaintiffs permission to make the requested modifications in 1998.The ASSOCIATION has acquiesced in or ratified the denials of Plaintiffs' modification requests and recently refused to waive judicial or other enforcement of the deed restriction barring homeowners from displaying any signs in response to Plaintiffs' request for permission to place a "for sale " sign on their property .It is named as a defendants primarily for the purpose of full and appropriate injunctive and declaratory relief.

(Statement of Claim)

9. Born in 1924 ,NEWBOLD suffer from severe osteoarthritis throughout her body. The disease has particularly taken its toll on her legs. Since 1978,she has endured numerous, lengthy and difficult leg reconstructive surgeries due to her osteoarthritis, prior surgical deficiencies or complications and a severe auto accident in 1987.She lives with two artificial knees replaced due to her osteoarthritis. In addition she suffers from high blood pressure and bouts often correlate with stress .NEWBOLD is unable to walk any distance without

shortness of breath and has difficulty navigating stairs. In the event of a fall, she can not right herself except with great difficulty if a wall or other support is nearby and generally must await or call for LOREN or some other person to help her up .For that reason Loren has installed a telephone in each of the rooms of their home .

10.At all relevant times, NEWBOLD has been "handicapped" within the scope and meaning ,and entitled to the protections of 45 U.S.C && 3602 (h), 3604 and Fla. Stat.&& 760.22 (7) , 760.23

11. Largely since the death of her mother Emily Janke in 1981,NEWBOLD has been the immediate caretaker of her -step sister Janke .At times when LOREN has had to leave their home or been otherwise unavailable, Newbold temporarily becomes the only immediate caretaker of JANKE.**NEWBOLD and JANKE share a bedroom on the first floor of their home in Hernando Beach South.**

12.Since her birth in 1941 ,JANKE has been blind and severely mentally retarded, possessing the mind and emotional faculties of a 3-year old child. She cannot eat ,dress, or shower herself. Her ability to speak and understand language is extremely limited which confounds communication and understanding of her needs or problems. Common or simple words often require repetition and she frequently struggles to find the words to describe or identify what she needs or wants. Sometimes she uses song to help facilitate her speech and understanding. At times when she cries ,she can relate why other times not. If asked her name and address ,sometimes she will relate a childhood address and nickname and on other occasions simply the name of other people present.

13.In JANKE's world ,adaptation does not come easily ,if it at all. **Repetition and patterns become critical to familiarity and her personal comfort.** Unfathomed but ordinary developments can easily engender apprehension

or panic. Simple but misunderstood or unmet needs or wishes produce frustration .In response ,poorly developed or nonexistent coping mechanisms parade as tantrums, repetitious chants ,shrieks or songs and other "acting out" behaviors. Daily and cumulative demands on even the most loving ,patient and devoted of caretakers are enormous.

14. Over the years, radio has been a great companion and source of enjoyment for JANKE. She has always enjoyed being outdoors where she can listen to different sounds ,feel the sun and wind **or simply sit with her dog and feel secure .Part of her pattern for years (weather permitting)in Chicago were twice -daily trips outdoors.**

15. Unless confined to an area outdoors, constant and immediate supervision was required for JANKE as she could and would wander off. However ,immediate and constant supervision of JANKE also had a downside both for the caretaker and JANKE .If the caretaker were continuously present ,JANKE would tend to rely upon that person for guidance or simply "act out" rather than learn to adjust and adapt to her new surrounding in FLORIDA.

16. At all relevant times ,JANKE has been unable to live on her own without the care and supervision provided by LOREN and step -sister NEWBOLD ,and severely "handicapped "within the scope and meaning and entitled to the protection of 45 U.S.C.&& 3602 (h) ,3604 and Fla Stat.&& 760.22(7),760.23

17.At all relevant times, LOREN has been a "person" residing with two "handicapped" family members providing them with daily care and attempting to provide reasonable accommodations for their conditions so that they may be better function in her absence and more fully enjoy their home within the scope and meaning and entitled to protection of 45 U.S.C &&3602(d) 3604 and Fla Stat. && 760.22(8), 760.23

18. **In January 1997 LOREN and AGUIRRE enlisted the services of an agent with a local realtor to help them find homes for sale in Hernando Beach South.**They look particularly for a one story or split -level home with a low front stairs (easily modifiable for handicap access) and a pool or room for a pool in the back. Future improvement when entire family could afford to make it available

19. Room for a pool was important because a pool would provide comfort and medical therapy for Newbold and the painful ostearthritis in her legs and Janke who ,in addition to her other medical conditions and physical limitations suffers swollen legs largely from lack of exercise .Swimming appears to improve Newbold medical condition unable to leave Janke alone to go to YMCA if daughter is not present .

20. LOREN and Aguirre chose a home which abuts a canal in the back to the north ,has room for a small pool in the rear on a narrow strip of land between the house and the canal and low stairs in the front (roadside) to the south with room for a ramp and deck area. Immediately across the street from the front of their home on Jewfish Drive was the developer's model and office .Their home is situated at the southeast corner of the community at the intersection of Jewfish and Sea Bass Drives. Sea bass Drive (running north and south) provides the main access to roads within the community which dead end at Sea Bass Drive on the east and run west onto fingers of landfill between canals.

21 Plaintiffs knew when they moved into Hernando Beach South that it was a deed restricted community but believed based on representations of the realtor and the absence of any known deed restrictions expressly restricting or limiting accommodations for handicapped, that the community was hospitable to those with handicaps. Attachment A hereto is a true copy of the deed restriction for Hernando Beach South at all relevant times.

22. In February 1997 Plaintiff moved into their home in Hernando Beach South .Since then, Plaintiffs have continuously resided together save for periods of hospitalization of JANKE and family trips.

23. At all relevant times Defendants have known of the handicapped status of NEWBOLD and JANKE and of LOREN's overall resident caretaker of both.

24. Initially upon moving into their home in Hernando Beach South ,JANKE was able to walk upright and normally either on her own or with someone holding her hand guiding her. While Loren worked on replacing carpeting with vinyl tile. Janke slowly began to adjust to her new home and interior surroundings as she would have to on the outside premise of private property.

25. Within days of moving into their home LOREN sought and obtained permission from the predecessor homeowners 'association (which later in 1997 was dissolved by SASSER) to install a small fenced dog run for JANKEs 'dog along the west side of their home and within the ten foot space between their home and western lot line.

26 Upon noticing the dog run construction on Plaintiffs' property SASSER and Corporation Developer protested to the homeowners' association which in turn complained to the fencing contractor about using cement (without a drainage plan)and vinyl (semi -privacy)inserts in the fence. Only after pointing out number of existing homes with side fences or dog runs were Plaintiff allowed to complete construction of their desired dog run-initially without insert or cement.

27 .Several months after moving into their home ,JANKE was diagnosed with breast cancer .She had never previously been in a hospital or sick. Over the course of the following year, she was frequently in and out of doctors 'offices, laboratories and hospital for examinations ,tests, two operations. During this time a wheelchair had

to be secured and frequently used for JANKE.This medical ordeal compounded JANKE's fears (her public outing involved strange places and noises beyond her limited and secure world) and disrupted her sleep patterns which further taxed her caretakers.

28 While she adjusted to her new surrounding and during her lengthy bout with cancer and treatments, JANKE was largely confined indoors. Over time JANKE's skin had acquired a sickly white pallor and the absence of daily trips to the outdoors and fresh air further worsened her disruptive and tiring sleep patterns. No longer content with her interior surrounding and remembering days and pattern past, JANKE herself increased her demands for "glider"(an outdoor couch from her Chicago years that swayed back and forth on a gliding mechanism)and which was her way of communicating that she wanted to go and be outdoors.

29.Starting July ,1998 ,LOREN began requesting permission from Corporation Developer and SASSER to install a four -foot ,chain link fence in part of their front yard behind (and shielded by)a small square shaped row of red cedar bushes. The fence would serve various needs and purposes including :allowing JANKE to begin adjusting to her outdoor surrounding and feel secure and safe outdoor as well as indoors ,to enjoy the sun and fresh air ,to have her dog nearby without fear that the dog would run off or bite someone approaching the property and affording NEWBOLD and LOREN a respite from continuous supervision without fear of JANKE wandering off.

30 CORPORATE DEVELOPER and SASSER repeatedly denied LOREN's requests for permission to construct this **county already permitted fence**. They claim that: they had the sole and absolute discretion under improvements" deed restriction to deny permission ;everyone would want fences if Plaintiffs were allowed to have one and that

would be a contrary to the aesthetic goal open spaces[narrow building lots for profit]; fences had only been authorized in the rear of properties pointing out [incorrectly]except for Plaintiffs' dog run and that was over the objections of some owners opposed to any fences; the requested fence would obstruct the line of sight of drivers who had to stop at intersection of Jewfish and Sea Bass Drives; and Plaintiffs had the option of installing a fence area in the back that sloped instead of pool {a narrow area between back stairs and canal wall].

31 In addition to denying Plaintiffs permission to install a four foot fence in a small section of their front yard CORPORATE DEVELOPER and SASSER demanded that Plaintiffs cut their red cedars down to two feet in height .Plaintiffs (with former homeowner association permission)had planted these bushes for security, privacy, nose reduction ,aesthetics and to the line and hide the outside of their anticipated fence. SASSER complained that the bushed impaired drivers lines of sight at intersection. However upon checking with county code enforcement officials and moving several of the bushes a few feet ,Plaintiffs were to avoid having to cut down their cedar bushes.

32.Over time and numerous visit to the doctor s and hospital for cancer care and treatments, JANKE had begun to associate going down the front stairs to the garage with going for medical treatment and resisted.

33.Because their home sits on a mound of canal dredge fill ,the ground slopes away from the outside of their home and is un level. Any safe enjoyment of a partially-fenced front yard would require level, wheelchair - accessible ground for JANKE and NEWBOLD

34.By letter and attachments of September 11,1998Loren requested of CORPORATE DEVELOPER and SASSER permission to construct a 13 by 19 foot deck and attached

wheelchair ramp and platform from and off front double doors and concrete stoop of their home .The ramp would **accommodate the needs for safe egress and ingress for NEWBOLD and JANKE** from a location in a narrow hall off the large foyer and kitchen area immediately inside the front double doors. The level deck area would permit safe enjoyment of the outdoors by JANKE and NEWBOLD and break JANKE's association that venturing out meant a trip to the doctor. **The county had already permitted construction and ,with a modest change in the location of the red cedar bushes, approved the construction** and bush locations with respect to line -of sight issues at the intersection of Jewfish and Sea Bass Drives. Attached to the request was a detailed drawing of the project's dimensions ,building material and methods for the decking, and the location relative to their home and concrete drive.

35.By letter dated September 16,1998 Sasser and Corporate DEVELOPER denied the ramp / deck construction requests .**They claimed that the drawing attached to LOREN's request was inadequate to determine whether it would violate deed restriction** 1(no improvement without prior permission),7(requiring neat and orderly care of lots and covered trash containers),11 (prohibition against trailers ,tents, shacks or outbuildings), and 14 (prohibition against nuisances noxious or offensive activities).

36 LOREN discussed the rejection letter with a wheelchair -bound ramp and deck designer familiar with handicap access issues and needs. After reviewing the deed restrictions cited by SASSER ,he concluded that none expressly applied or justified barring Plaintiffs from building a ramp and deck in this area. However he suggested reducing the deck size and configuration to save material cost [waste of material by cutting] and remain within the wall line of home and garage. At

Loren's request ,he prepared revised ,detailed plans incorporating his suggestions.37. On October 3,1998 NEWBOLD was attempting to navigate as they always have done, the front steps down to the garage the only best suited staircase at the time to take JANKE out of the community. JANKE resisted ,fearful again that she was going to a doctor, and balked pulling back while on the top step and pushing NEWBOLD forward .As a result ,both lost their balance and fell down the stairs.

38.LOREN along with her sister AGUIRRE visiting from Chicago heard the commotion and ran to the interior garage door only to find their mother face down and prostrated in front of steps on the concrete with JANKE sprawled partially on top NEWBOLD, JANKE was screaming and her mouth was bloody from where she had hit the concrete steps and cracked off parts of her tooth's in the fall. In Addition to the source of pain for JANKE,both NEWBOLD and her sister were in pain from bumps and bruises suffered in the fall and visibly shaken. AGUIRRE ,a registered nurse ,determined that neither appeared to have any broken bones or to require emergency medical treatment a wait and see if increased pain for doctor visit, worsen later called for appointment 39.This fall frightened NEWBOLD and left her distraught over fears and concern for JANKE, NEWBOLD has a bump on her right leg from the fall. Walking and standing (which were not good before the fall)have become more difficult. From time to time she experiences different pains and discomforting twinges in her leg since the fall. She has yet seen her orthopedic specialist in Chicago and the permanency and nature of any injuries suffered by NEWBOLD as result of the fall or whether she might require surgery are all currently unknown. LOREN and AGUIRRE are fearful that yet another surgery and anesthesia could be risky at NEWBOLD'sage and in her condition .If her condition worsens a walker or wheelchair

for Newbold may be required or preferable to risky surgery.

40 .In addition to cracking her tooth's, the fall scared JANKE and has added another reason to resist using the stairs and venturing outside. Since the fall she has had to have the reminder of top teeth removed. The fall has less active and mobile .Immediately after the fall ,due to back pain she would remain immobile during and often refuse to get up at all in the morning. While she walked erect and without pain or great difficulty prior to the fall, she now shuffles along (when she can be persuaded to get up and walk at all)with a permanent crick in the lower back.The pain and lack of nighttime movement contributed to a severe infection of an earlier, chest biopsy area(which ultimately required surgery to open and drain) and further lack of mobility and exercise have contributed to swelling of her legs. Since the fall she has become more wheelchair dependent and frequently requires or demands access to a portable toilet near her bed rather than travel the additional feet to the bathroom.At this time ,the permanency and full nature of any further suffered from the fall by JANKE are unknown.

41 Incensed and fearful over September 16,1998 rejection letter and subsequent fall down the stairs by mother and step -aunt ,by letter dated Oct,07,1998 the matter was turned over the Attorney General Office received all documents certified mail 10/09/1998 Loren submitted revised detailed rendering s and drawing of deck /ramp project prepared by the handicapped ramp designer for smaller deck and ramp area (11by 17 deck and 18 by 51/2 foot ramp)to SASSER and CORPORATION DEVELOPER in an effort to secure permission for project or better determine which deed restrictions if any) were still being invoked to prohibit this requested modification.

42. By letter dated October 16,1998 SASSER and CORPORATE DEVELOPER again denied permission to

Plaintiffs to construct the deck /ramp .This time they claimed it was detraction to the community because all approved decks are in the rear as required by the deed restrictions(not stated in deed restriction)In addition, they claimed the ramp design **approved by the county** was unsafe for handicap use and suggested that the ramp be constructed inside garage**(not possible proven by designer drawing and SASSER disposition.**

43. Plaintiffs have satisfied any administrative prerequisites to suit. filing of administrative charge of housing discrimination is not required by federal law nor arguably required by state law. However, JANKE and NEWBOLD filed state and federal administrative complaints .The 180 day waiting period (between filing an administrative complaint and commencement of suit)under Fla Stat& 760.34 (4) has expired.

44.Defendants are parties subject to the prohibitions and obligations of federal and Florida Housing acts.45 U.S.C &&3601 et seq and Fla Stat.&&760.20 et seq. Plaintiffs may file a federal complaint without administrative complaint under fair housing but not so with employment discrimination cases.

45.Under the Federal and Florida Fair Housing Acts,it is unlawful "[t]o discriminate against any person....in the provision of services or facilities in connection with [a purchased] dwelling ,because of a handicap of —(A) that person (B) a person residing in.....that dwelling...."45 U.S.C. &3604(F) (2);Fla Stat. &760.23(8)

46. Under the Federal and Florida Fair Housing Acts, discrimination prohibited by the act includes either a refusal " to permit, at the expense of the handicapped person reasonable modifications of existing premises.....occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises" or "refusal to make reasonable accommodations in rules ,policies, practices ,or

services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling"45 U.S.C&3604 (f)(3)(A),(B);Fla.Stat.&760.23 (9)(a),(b).

47.Under the federal and Florida Fair Housing Act,deed restriction or construction and application of deed restrictions that conflict with the obligations to permit handicapped person "full enjoyment "or equal use "of their homes are invalid or unenforceable.

48.Most of the restrictions cited by SASSER and CORPORATE DEVELOPER as justification for their denial have no application to Plaintiffs' requested modifications and none expressly bars or prohibits those modifications.

49.In interpreting and applying the deed restriction for Hernando Beach South SASSER and CORPORATE DEVELOPER had room to approve the modifications requested by Plaintiffs.

50.In interpreting and applying the deed restriction for Hernando Beach South SASSER and CORPORATE DEVELOPER violated the Federal and Florida Fair Housing Act by failing or refusing to accommodate the rights of Plaintiffs to make reasonable modifications necessary to afford them "full enjoyment "of ,and "equal opportunity to use "their home.

51 Over the years Defendants (or predecessor association)have granted permission to homeowners in Hernando Beach South to erect ,install or construct various items or improvements(otherwise prohibited under the deed restriction without permission)including but not limited to various fences ,decks, landscaping ,satellite dishes etc. Based on the information or belief ,these approved requests have rarely (if at all arisen from handicap needs.

52.Based on information or belief ,SASSER and CORPORATE DEVELOPER have previously been unreceptive to other requests for reasonable modification

to accommodate other handicapped people in Hernando Beach South. Among such denials one family was denied permission to raise slightly the height on the home plans for their garage entrance in order to accommodate a taller ,handicapped-accessible van. Others also have reportedly been denied permission to construct wheelchair ramps

53. Agents of SASSER and CORPORATE DEVELOPER have made comments to or about Plaintiffs manifest(at best)disregard or intolerance for handicapped obligations and (worst)contempt for and discrimination against people with disabilities. For example ,comments and questions were directed at the woman who purchased the developer's model across from Plaintiffs' home on Jewfish Drive about how her view [allegedly]would have been adversely affected had they allowed the requested deck and ramp on Plaintiffs' property. And in the course of purporting to explain the unreceptive responses to Plaintiffs requests for modifications the comment was made to Plaintiffs Loren that we don't care who lives in your home—rules are rules.

54.The tone and example for such comments emanates from the top .SASSER's letters of denial to Plaintiffs speak volumes—Hide your ramp in the garage[a suggestion both insulting and impractical].Put your fence instead of a pool in the back [a back area barely wider than a dog run along the west side of their home and, unlike the bush surrounded front ,visible to all who drive down Sea Bass Drive and from the fronts of numerous homes in the community.]Citations to inapplicable or non controlling deed restrictions .Spurious demands for more detailed plans or reasons for denial. Further, despite frequent visits to the model and office across the street from Plaintiffs' home ,SASSER himself never once stopped by or made himself available to discuss Plaintiffs 'needs nor he otherwise ever shown any expression of concern for their needs.

55. SASSER is not unaware of regulations for the benefit of the disabled when it serves his purpose .For example ,in successfully seeking permission last year to build a townhouse project in a coastal area zoned commercial ,SASSER and CORPORATE DEVELOPER contended that business were wary of locating to the area due to regulations requiring buildings to be elevated but accessible for the disabled.

56.SASSER's and CORPORATE DEVELOPER's action in denying Plaintiffs permission to make the requested modification have been taken without legal justification but with malice —claiming sole and absolute discretion to deny requested modification for any reason including aesthetics while intentionally violating or recklessly disregarding the needs and rights of Plaintiffs for such modifications.

57 The association has known of Plaintiffs handicap needs, request to SASSER ,and the fall suffered by them from attempting to use stairs instead of a ramp but has done nothing to reverse or ameliorate SASSER's denials of their requests. As such, the ASSOCIATION has ratified or acquiesced in SASSER's and CORPORATE DEVELOPER's rejections of Plaintiffs' attempts to secure full enjoyment and equal and safe use of their home.

58.The acts and omissions of Defendants coupled with the denial of Plaintiffs' request have further distressed Plaintiffs making them feel isolated and shunned because of the disabilities of NEWBOLD and JANKE.They feel that they are being told, in effect: You can live here but stay in your home and keep your disabilities hidden.

59. Defendants 'act and omissions coupled with denials of Plaintiffs 'requests(even after suffering personal injuries)have caused LOREN ,NEWBOLD,JANKE and AGUIRRE to want to relocate to a community more hospitable to the basic needs and fundamental right of

families with handicapped members and effectively ,forced a sale of their home.
60.SASSERand CORPORATE DEVELOPER's actions in denying Plaintiffs permission to make requested modification have deprived Plaintiffs of full enjoyment of, and equal opportunity to use their home and yard, caused them to suffer emotional distress and mental anguish ,significantly enhanced the risk of injury, and caused them personal and other injuries.
61. A genuine dispute exist between Plaintiffs and Defendants as to the rights and obligations of the parties under the Federal and Florida Fair Housing Act to make and allow the modifications sought by Plaintiffs. A declaration of these rights and obligations would likely materially advance the disposition of this action.
62.The Florida "Fair Housing Act, "Fla. Stat. && 760.20 et seq. provides a statutory cause of action that is substantively identical for all relevant purposes (including available relief)to the federal fair housing claims over which this court has original jurisdiction and which arise from the identical facts and circumstances as the federal claim. As such this Florida Fair Housing claim lies well within the scope of the Court's discretion to exercise pendent or supplemental jurisdiction under 28 U.S.C. &1367.

COUNT I

(Federal Housing Discrimination Claim For Damages And Declaratory Relief Permission To Construct Fence)

63.Plaintiffs reallege and incorporate by reference Id.2-61
64.Construction of the requested fence in the fence in the front of their home was a reasonable modification necessary to afford to NEWBOLD and JANKE safe and full enjoyment and equal opportunity to use their home with the scope and protection of 45 U.S.C. &3604(f)(3)(A)&(B).
65.SASSERand CORPORATE DEVELOPER unlawfully

discriminated against Plaintiff in violation of 45 U.S.C&3604(f) by refusing Plaintiffs permission to construct the requested fence in part of their front yard .

COUNT II

(Florida Housing Discrimination Claim For Damages And Declaratory Relief Over Refusing Permission To Construct Fence)

66.Plaintiffs reallege and incorporate by reference Id2-62

67 .Construction of the requested fence in the front of their home was a reasonable modification necessary to afford NEWBOLD and JANKE safe and full enjoyment and equal opportunity to use their home within the scope and protection of Fla. Stat. & 760.23 (8)& (9)

68.Sasser and CORPORATE DEVELOPER unlawfully discriminated against Plaintiff in violation of Fla.Sta.&760.23(8) &(9) by refusing Plaintiffs permission to construct the requested fence in part of their front yard as well as a failure to change rules and policies 3604(A)(B)

COUNT III

(Federal Housing Discrimination Claim For Damages And Declaratory Relief Over Refusing Permission To Construct Ramp /Deck)

69 .Plaintiff reallege and incorporate by reference Id 2-61

70.Construction of the requested ramp and deck area in the front of their home was a reasonable modification necessary to afford NEWBOLD and JANKE safe and full enjoyment and equal opportunity to use their home within the scope of 45 U.S.C & 3604 (f) (3)(A) & (B).

71, SASSER and CORPORATE DEVELOPER unlawfully discriminated against LOREN,NEWBOLD,JANKE in violation of 45 U.S.C3604 (f) by refusing Plaintiff s permission to construct the requested ramp and deck.

COUNT IV

(Florida Housing Discrimination Claim For Damages And Declaratory Relief Over Refusing Permission To Construct Ramp/Deck)

72.Plaintiffs reallege and incorporate by reference Id 2-62
73.Construction of the requested ramp and deck was a reasonable modification necessary to afford NEWBOLD and JANKE safe and full enjoyment and equal opportunity to use their home within the scope and protection of Fla. Stat& 760.23 (8)& (9).
74 SASSER and CORPORATE DEVELOPER unlawfully discriminated against LOREN, NEWBOLD, and JANKE in violation of Fla Stat & 760.23(8) & (9) by refusing Plaintiffs permission to construct the requested ramp and deck.

COUNT V

(First Amendment -1983 Claim For Declaratory and Injunction Relief Over Enforcement of Deed Restriction Barring "For Sale " Sign)
75.Plaintiff Loren realleges and incorporates by reference Id 2-61
76.Plaintiffs cannot relocate until after they have first sold their home.
77. Plaintiffs desire to place a "for sale "sign on their property in order to facilitate a sale of their home
78 Placement of a "for sale "sign on Plaintiffs' property would communicate to prospective home buyers the availability of their home and could well expedite its sale and increase Plaintiffs return from sale of their home.
79. Deed restriction number 9 expressly prohibits homeowners from placing any signs or advertisement on their lots but reserves to CORPORATE DEVELOPER the right to place for sale signs on undeveloped lots and for contractors to advertise their participation in construction projects within the community.
80.Based on the information and belief ,all currently undeveloped lots in Hernando Beach South have been sold .Defendants know (or should know) this as well.
81.Plaintiffs recently requested permission from association to place a "for sale "sign on their property but

but the request was denied leaving Plaintiff open to judicial action(possible injunction and attendant award of court cost and attorney 's fee in a local forum not of Plaintiffs choice)to enforce this deed restriction if they should place such a sign on their property.
82.Defendants 'threatened Judicial enforcement of deed restriction barring Plaintiff LOREN from placing a "for sale "sign on her property constitutes "state action "or action "under color of law" within the scope and meaning of the First and Fourteenth Amendments and 42 U.S.C &1983
83. Other alternatives for advertising Plaintiff's home (listing with a realtor ,newspaper or other media ads)impose significant costs beyond those of a basic "for sale" sign or are less or ineffective at reaching those potential buyers who shop by selecting and driving through a particular area or community looking for sign indicting which homes are available.
84 .LOREN believes that she has a basic First Amendment right to place a common "for sale " sign on her property but threat of judicial action to enforce this deed restriction has deterred her from doing so.
85. An Actual controversy exist as to whether threatened judicial enforcement of this deed restriction violates Plaintiff LOREN's constitutional rights. A declaration of rights would materially advance or effect of her constitutional claims.
86.A declaration of Plaintiff Loren rights to communicate to potential buying public in this most basic of matters is essential to their exercise. Without such declaration ,defendants' threatened enforcement of this deed restriction will continue to chill LOREN'S excise of such rights.
87. Because of the inherent uncertainties and inabilities to quantify monetary damages arising from this for -sale - sign ban(e.g, How much sooner could a sale have effected

and netting Plaintiffs : how much more if not barred from having a "For sale" sign on their property?
Plaintiff LOREN has no adequate remedy at law.
Once the by owner sign was posted plaintiff had a large amount of telephone calls from buyers sold home with larger bid .Plaintiff had to pay real estate agents commission fee and attorney fee, closing cost eleven thousand dollars to leave this community because of violation of 3604,discriminatory attitude toward handicap
_88. This deed restriction on it face bars homeowners in Hernando Beach South from placing any "signs or advertisements "on their lots or within the subdivision regardless of the substance or content of such sign, intended or desire audience ,thus chilling the potential exercise of core First Amendment speech rights.
89. This restriction on its face is vague and ambiguous thus further chilling the potential exercise of first Amendment rights of Plaintiffs and other homeowners in the community. For example ,there is nothing in the deed restriction to stop this Association or the next reconstituted one from deciding that seasonal lights or even modest display communicating matters of public concern or political candidate support would be "signs and ,therefore prohibited.

COUNT VI

__Equal Protection _ &1983 Claim For Declaratory and Injunction Relief Over Enforcement Of Discriminatory Deed _Restriction Barring "Barring "for Sale "Sign)
90.Plaintiff LOREN reallege and incorporates by reference Id 2-61,76-89
91.On its face ,this deed restriction discriminates between CORPORATE DEVELOPER and building contractors(granting CORPORATE DEVELOPER rights to erect _"for sale "signs on undeveloped lots or lots otherwise owned by it and granting contractors ,banks ,service companies, rights to advertise their participation

in uncompleted construction projects) and homeowners (who are barred from placing "any signs or advertisement political or otherwise on their lots or within the subdivision)
92.The classification scheme lacks rational and legitimate support or support sufficient to justify the restriction on LOREN's basic First Amendment rights.
93.LOREN believes that CORPORATE DEVELOPER and contractors have no greater right than homeowners to place sign on lots in Hernando Beach South and that threatened judicial enforcement of this discriminatory deed restriction violates her rights to equal protection under the 14th Amendment

(Common Prayer For Relief)

WHEREFORE Plaintiffs request that the Court:

A. exercise its discretion and assume supplemental jurisdiction over Plaintiffs Florida Fair Housing Act claims (Count II & IV) under 28 U.S.C. & 1367;

B. Grant trial by jury of all issues so triable as of right on housing discrimination claim (Count through IV);

C. enter judgment against SASSER and CORPORATE DEVELOPER on housing discrimination claim (COUNTS I through IV) in such amount as the **evidence demonstrates** and jury determines will:

1)compensate Plaintiffs for their actual damages and losses; and,

2) punish **Defendants** for their wrongs and deter others in similar positions from violating rights protected under the Federal and Florida Fair Housing Act;

D exercise its discretion and enter a declaratory judgment against Defendants under Fed .R Civ.P.57 and USC&2201 declaring:

1) Plaintiffs right to the requested modifications under the Federal and Florida Fair Housing Act(Count I to IV); and

2) Plaintiffs '1st Amendment and equal protection

rights to place a "for sale "sign on their property and that the deed restriction banning any "signs" by homeowners is unconstitutionally vague and overly broad under the 1 st and 14 th Amendments (counts V & VI);

E. exercise its discretion and grant preliminary and permanent injunctive relief barring Defendants from enforcement in any manner of the deed restriction banning homeowner signs on their property;

F. Award Plaintiffs their costs and reasonable attorney 's fee against Defendants under 45 U.S.C &3613(C)(2) [Count I & III];Fla . Stat.& 760.35 (2) [Count II & IV]: **42USC& 1988** [Count s V& VI]; and deed Restriction Id p.25[Count I through VI and ,

G .enter judgment awarding or granting such other damages or equitable relief **against Defendants**(COUNT I to VI) **as warranted. Respectfully filed this 19th day of October,1999 S/B _____Jeffrey H Klink (FBN:151657) Trial Counsel For Plaintiffs Jeffrey H Klink ,P.A 419 West Platt Street ,Po Box 1165 Tampa Fla 33601-1165 Tel:(813)258-0288 Fax (813)258-0346**

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT IN AND FOR HERNANDO COUNTY FLORIDA

AUTO -OWNERS INSURANCE
Plaintiff

CASE NO: H27-CA -2000-002252 CN
Filed September 15,2000

vs.
CHARLES M SASSER individually
HERNANDO BCH INC ,a Florida corporation
NICOLE LOREN individually BETTIE NEWBOLD individually and CHARLENE JANKE individually by through VERONICA AGUIRRE
Defendants '

COMPLAINT FOR DECLARATORY RELIEF

COMES NOW the plaintiff ,AUTO -OWNERS INSURANCE COMPANY by and through its undersigned attorney and sues Defendants CHARLES M SASSER individually HERNANDO BEACH INC a Florida corporation ,NICOLE LOREN individually, BETTIE NEWBOLD individually and CHARLENE JANKE individually by and through VERONICA AGUIRRE and states:

1. This is a action for declaratory relief pursuant to Florida Statues & 86
2, At all times material hereto ,the plaintiff Auto-Owners Insurance was a Michigan corporation authorized to do business in Florida and engaged in the business of providing liability insurance to business ,including those located in Hernando County
3. At all times hereto Defendant Hernando Beach Inc was located in and had its principal place of business in Hernando County ,Florida
4. At all times material hereto, Defendants Charles M

Sasser JR ,Nicole Loren Bettie J Newbold and Charlene Jenke were residents of Hernando County Florida

5. On about October 19,99 Defendant Charles Sasser and Hernando Beach were served with a complaint consisting of claims of civil rights of Defendants Nicole Loren ,Newbold and Jenke were violated ,and allegations of housing discrimination .A copy of complaint as Exhibit "A" and incorporated herein:

6. The Complaint filed by Defendants ,Loren ,Newbold and Jenke against Defendants Sasser and Hernando Bch Inc allege:

Count I Federal Housing Discrimination claim for damages and declaratory relief over refusing permission to construct fence

Count II Florida Housing Discrimination for damages and declaratory relief over refusing permission to construct ramp /deck

Count III Federal housing discrimination claim for damages and declaratory relief over refusing permission to construct ramp /deck

Count IV Florida Housing discrimination claim for damages and declaratory relief over refusing permission to construct ramp /deck

V First Amendment Section 1983 claim for declaratory and injunctive relief over enforcement of deed restriction barring 'for sale " sign

Count VI Equal Protection section 1983 claim for declaratory and injunction relief over enforcement of discriminatory deed restriction deed restriction barring 'for sale sign

7, Auto -Owners insured Defendants Sasser and Hernando Beach Inc by virtue of commercial general liability policy number 924612-20434415-99 a copy of which has been attached as Exhibit 'B and is incorporated herein.

8 The allegations contained in the complaint in contained in the complaint attached hereto as exhibit 'A" do not constitute an occurrence under Auto -Owners Policy

9. The injuries alleged by the plaintiff in Exhibit "A' do not constitute bodily injury or property damages as defined in the Auto -Owners policy

10.The actions complained of in Exhibit 'A ' are alleged as intentional acts by Sasser/Hernando Bch Inc and consequently ,extended from coverage ,if any by virtue of section 1.A,2.a of the Auto -Owners insurance policy which states:

The insurance does not apply to:

a. Bodily Injury or Property Damage expected or intended from of the insured"

11. Defendants Sasser and Hernando Bch Inc have requested Auto Insurance Company to defend and indemnify them from the claim made Exhibit 'A" and Auto -Owners Insurance Company is uncertain as to its rights and duties under liability policy in Exhibit "b" in light of the above alleged facts

Wherefore Plaintiff pray this Court will enter final judgment finding that Plaintiff Auto Insurance Company has no duty to defend or indemnify Defendants Sasser, Hernando Bch Inc for the claims brought under Exhibit "a'

Dated this 15th Day of September ,2000

S/B A.D Wade James Esquire
A Wade James P.A
216 Mirror Lake Drive North
St Petersburg ,Florida 33701-3224
(727)823-1144
SPN777193 FBN378275
Counsel for Plaintiff

App .27

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN AND FOR HERNANDO ,COUNTY FLORIDA

AUTO -OWNERS INSURANCE
Plaintiff

Case No.H-27 CA 2000-002252-CN

vs

CHARLES M SASSER JR ,individually
HERNANDO BEACH INC a,Florida Corporation
NICOLE LOREN, individually
BETTIE J NEWBOLD individually CHARLENE JANKE individually and through VERONICA AGUIRRE
Defendants

_____/

AFFIDAVIT

COUNTY OF HERNANDO
STATE OF FLORIDA

BEFORE ME, the undersigned authority duly authorized duly authorize to administer oaths and take acknowledgments ,personally appeared John H OBrien who after being first duly sworn deposes and says

1,That he is the President of O Brien and Beltzer Inc
2.That he is licensed 220 insurance agent
3. That he has been licensed agent since 1993
4.That he is familiar with general liability insurance policies and the coverage's contained therein
5 That he has experience in interpreting policies of insurances to determine if a policy holder is covered under policy
6.That he has experience in interpreting general liability insurance policies
7. That he is familiar with the general liability insurance policies That he is familiar with the general liability

insurance policy issued to Charles M Sasser Jr ,Hernando Beach Inc by Auto Owner's Insurance Co (the Policy")

8 That he is general familiar with the allegations contained in the Complaint filed by Nicole Loren,Bettie Newbold and Charlene Janke by and through Veronica Aguirre (the Plaintiff) dated October 19,1999 (the Complaint)

9That based on his experience and expertise in interpreting insurance policies the acts complained of by the Plaintiffs in the complaint are covered by the policy as bodily injury"

10 That based on his experience and expertise in interpreting insurance policies the act complained of by the Plaintiff's in the Complaint are covered by the policy as personal injury

11. That based on his experience and expertise in interpreting insurance policies the act of discrimination complained of by the Plaintiffs in the complaint are not intentional so as to cause the acts to be excluded by policy

FURTHER AFFIANT SAYETH NOT

S/ B John H O'Brien

The Hogan Law Firm
20 Broad St PoBx 485
Brooksville Florida 34605
(352)799-8423 Fax (352)799-8294

Faxed 6/19/01 Deborah McCail Attorney At LAW

Thomas S Hogan

Counsel for Sasser and Hernando Beach Inc

Citing Legal Case: Ranger Insurance v Bal Harbour 549 So 2d 1005

App.29

043712 filed and executed DEC 16 ,1994

Hernando Bch INC

BY: Charles M SASSER

O.R 996 PG 1318

MODIFICATION AND RESTATEMENT OF RESTRICTION AGREEMENTS FOR HERNANDO BEACH UNIT 13-B AND UNIT 13-C

Hernando beach ,Inc .,Florida Corporation ,the developer of Hernando Beach Unit 13-B and 13-c,and the declarant under that certain Restriction Agreement dated June 4,1982 and recorded in O.R Book 504,Page 801 and Amendment to Restriction Agreement dated September 26,1986 as recorded in O.R Book 624,Page 0062 and Amendment to Restriction Agreement dated December 18,1987 as recorded in O.R Book 675 Page 0662 and Modification of Restriction Agreement dated May 22,1992 as recorded in O.R Book 872 ,Page 1320 all in the public records of Hernando County ,Florida ,hereby modifies and restates and retains said Agreement as to the following property:

Unit 13-B as per plat thereof as recorded in Plat Book 17 at Page 70,of the public records of Hernando County Florida and

Unit 13C as per plat thereof as recorded in Plat Book 18,Pages 9 and 10 of the public records of Hernando County ,Florida being a replat of lots 1 thru 25 of block 133,of Hernando Beach ,Unit 13-B as per plat thereof as recorded in Plat Book 17,at Page 70,of the public records of Hernando County, Florida.

1.IMPROVEMENT.No building ,addition ,accessory ,fences ,television antenna or signal receiver, landscaping or other structure or improvement shall be commenced ,erected, placed or maintained upon lot ,nor shall any exterior addition to or change or alteration be made until complete written plans and specifications showing the nature ,kind, size (including the size and square footage of

each separate room or area),driveway layout ,shape, color height ,floor plan ,materials, location and approximate cost of same have been submitted and approved in writing by Hernando Beach ,Inc. The failure of Hernando Beach, Inc to give notice of its disapproval of such plans and specifications within thirty (30) days after receipt shall be deemed to consti-tute its approval. **Hernando Beach Inc .shall have the authority to issue and publish written rules ,standards and guidelines** consistent with the requirement of this paragraph, respecting the design ,construction and landscaping of dwelling and other improvements. **Denial of approval of plans and specifications by Hernando Beach Inc may be based on any grounds ,including purely aesthetic grounds, in the sole discretion of Hernando Beach Inc .Approval may be denied on the basic that the proposed structure, or material component thereof, including roof or facade ,is identical or nearly identical to one already existing or approved for construction in the subdivision. No rules ,standards, and guidelines ever written**

2.<u>SET BACKS.</u> There shall be nothing constructed on any lot, block or parcel except as hereinafter provided within a minimum of 10 feet from each side of property line and 25 feet from the front property line and 20 feet from the back property line where the lot depth is 100 feet and 15 feet where the lot depth is less than 100 feet.

Please note : Plaintiff on corner lot, within property line and setback on handicap accommodation however the community has county variances on fences ,pools and most other homeowners requested as all lots in community are narrow for profit.

3 .<u>WELL,, SEPTIC TANKS</u> There shall be no wells or septic tanks constructed in or on any lot ,block or parcel unless hereinafter designated and approved in writing by Hernando Beach Inc ,All property owners must use the water and sewerage system provided by Hernando

County Utilities.

4.Use Of Lots .All residential lots included in this Subdivision shall be used for single family residential purpose only. Hernando Beach Inc shall also be permitted to make temporary use of a **construction trailer** ,model homes, sales displays ,parking lots ,**sales offices or other offices or any combination thereof ,until all lots owned by Hernando Beach Inc ,Inc are sold and the purchase amounts including mortgages 18 years are paid -in -full.**

5.Trailer Storage. No travel trailers ,,motor homes ,boat trailers, utility trailers or recreational vehicles shall be stored on any lot.

6. Pets. A cat, dog or other household pet may be kept by an owner, provided that said animal shall be restrained by a leash at all times that it is not within the confines of the home or fenced yard. All other animals or pets shall not be kept or harbored except with written permission of Hernando Beach Inc .In the event any animal or pet is so approved and shall become ,in the discretion of Hernando Bch Inc .,an annoyance to others ,the said Hernando Beach Inc .,may order its permanent removal. No animal may be kept ,bred or maintained for any commercial purpose.

7.Care Of Lots. Lot owners shall keep their lots in a neat, clean and orderly condition, and in the event that the owner of any lot shall fail to maintain the same as aforesaid, the said Hernando Beach, Inc., reserves the right to enter upon said lot and care for same and cut the grass and remove the rubbish and to trim any trees and make a reasonable assessment for such care. All such assessments shall be paid within thirty (30) days from the

giving of the notice of assessment. Notice shall be given in the manner as provided in Paragraph #21of this Restriction Agreement. Trash, garbage, or other waste shall not be kept except in closed containers.

8. Laundry. All laundry to be dried outside the residence must be hung on a special drying apparatus in the form of a folding rack or umbrella which shall be placed at the rear of each lot.

9. Signs. No signs of advertisements shall be displayed on the lots, right-of-way, or any other part of the Subdivision, except as specifically designated and approved by Hernando Beach Inc. Hernando Beach Inc., shall have the right to enter upon any vacant lot for the purpose of removing any sign displayed in violation of this Section, and shall not be liable in any way for such entry or removal. **Notwithstanding anything to the contrary contained herein, Hernando Beach Inc., reserves unto itself, and shall have, the right to display for sale signs on lots owned by it.** In addition, during the period or construction of a residence, the general contractor, subcontractors, and construction lender may display appropriate signs stating their participation in the construction process. All signs relating to the construction process must be removed no later than ten (10) days after the issuance of a certificate of occupancy.

10. Minimum Residence Size. Each residential structure in Blocks 133 thru 138, inclusive, shall contain a minimum of 1400 square feet of enclosed living area, exclusive of garage, porch, or screened area. Each residential structure in Blocks 139 and 140, inclusive, shall contain a minimum of 1600 square feet of enclosed living area, exclusive of garage, porch, or screened area. Each residence shall have an attached garage. No residence shall exceed three stories in height. The ground floor of all two or three story residences shall be enclosed in such a manner as to conceal all objects contained within the ground floor from

view outside the residence.
11. Other Structures. No trailer, tent, basement, shack, detached garage, barn or other outbuilding shall be erected, either temporary or permanent.
12. Seawalls, Dock, & Wharves.
(a) Seawalls. All lots in Hernando Beach, Unit 13-B and 13-C shall include a concrete seawall at least two (2) feet higher than the mean high water line, and which shall extend the width of the lot. Construction and materials shall be in conformity with standards set by the Hernando County Building Department, and must be approved by Hernando Beach Inc., or its authorized representative, prior to construction. No construction of a residence or other improvement shall commence until the seawall is completed and has been approved by the Hernando County Building Department. Placement of all seawalls within the development shall be determined by Hernando Beach, Inc. or its authorized representative, so as to ensure uniformity among all lots within the development.
(b) Docks & Wharves. No dock, wharf, or walkway shall be constructed on waterfront lots except as follows: Docks, wharves pier, walkways which shall extend into canals with a width of one hundred (100) feet or more may be constructed, a maximum of twenty (20) feet from the edge of the lot line; those which extend into canals with a width of less than one hundred (100) feet may not extend more than ten (10) feet from the edge of the lot line. All canal alterations, including installation of pilings, seawalls or other retaining walls must be approved by Hernando Beach Inc. or its authorized representative prior to commencement of construction.
13. Drilling or Mining. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon any lot. No derrick or other structure designed for use in drilling for oil or natural gas shall be erected, maintained or permitted upon

any lot.

14. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be thereon which may be, or become, an annoyance or nuisance to the community.

15. Boat Speed. No boat or other object shall be operated in any canal at a speed in excess of five (5) miles per hour.

16. Landscaping. Each residence shall be sodded and landscaped in accordance with the plan submitted by the owner and approved by Hernando Beach, Inc. The minimum retail value of sod and landscaping shall be $1,500.00. Sodding and landscaping shall be completed within thirty (30) days and sixty (60) days, respectively, of the issuance of the certificate of occupancy by Hernando County. The entire yard between the street and the rear lot line shall be sodded.

17. Zoning And Planning. No portion of the Subdivision shall be rezoned or replatted without written consent of Hernando Beach Inc.

18. Violation. The restrictions set forth herein shall be covenants running with the land, and in the event of the violation of same or in the event of the violation of any of the rules and regulations lawfully imposed by Hernando Beach Inc., pursuant to this instrument, the said Hernando Beach Inc. or any lot owner may bring any suit in equity to enforce these restrictions.

19. Modifications. **Hernando Beach, Inc. hereby reserves the right to make reasonable modifications, either by way of additions to or deletions from these covenants,** restriction, and conditions, so that it may be better assure the protection of the value, desirability and attractiveness of this area.

20. Boat Lift. As stated in the Articles of Incorporation of Hernando Beach Unit 13-B Property Owners Association, Inc., one of the purposed of said Corporation is to own the fee simple title to and maintain certain properties existing

for the benefit of the lot owners in Unit 13-B Property Owners Associations, Inc. is the boatlift facility located approximately 300' South of the Southern end of the Sandpiper Canal, said canal lying in Unit 9 of Hernando Beach. Said boatlift facility is being constructed for the purpose of providing access to the waters of the Gulf of Mexico by lot owners in Unit 13-B as well we those owners of lots in Unites 12, 14, and Block 113, 114, 127, and 128, of Unit 13 of Hernando Beach. Each lot in Hernando Beach, Unit 13-B after the completion of the construction of the boatlift facility shall bear its prorate share of the expense of maintaining said boatlift facility, in addition to other properties which may be owned and maintained by Hernando Beach Unit 13-B Property Owners Associations, Inc. and the administrative expense of said Corporation. Also as stated in the Articles of Incorporation of Hernando Beach Unit 13-B Property Owners Association, Inc. all persons owning the fee simple title to a lot (s) in Hernando Beach, Unit 13-B, shall be members of the Corporation and shall be admitted to such membership by the recording of a conveyance to such party of the fee simple title to said lot (s) in Unit 13-B in the Public Records of Hernando County, Florida. Upon admission to such membership each member shall have such voting privileges as set forth in the By-Laws of said Corporation.

21. Assessments. In order to pay the expenses of owning and maintaining the boatlift facility the Board of Directors of Hernando Beach Unit 13-B Property Owners Association, Inc., shall from time to time by resolution assess each lot liable for the payment of such expenses. Upon the adoption of such resolution written notice of the assessment shall be given to the owners of each lot liable for the payment of such expenses at the address listed on the last tax roll of Hernando County, Florida. Depositing said written notice in the United States mail, postage

prepaid, addressed to the lot owner as such address shall constitute giving of notice. All such assessments shall be paid within sixty (60) days from the giving of notice of assessment.

22. Assessment Liens. Each such assessment, as provided for in paragraph #7 and #21 of this Restriction Agreement, shall constitute a lien upon the lots upon recording such assessments in the Public Records of Hernando County, Florida, subject to the payment of such expenses from the date of giving notice of assessment. Upon the failure to pay such assessment after sixty (60) days from the giving of notice, Hernando Beach Unit 13-B Property Owners Association, Inc., may foreclose the lien of such assessment in the manner provided by law for foreclosure of liens in the State of Florida. There is further granted a lien from the date of giving of notice of assessment for all expenses and attorney's fees incurred in the event of foreclosure of the lien of the assessment.

23. Sever ability. The invalidation of any one of these restrictions or any portion thereof shall not affect any of the remaining restrictions or portions thereof which shall remain in full force and effect.

24. Assignment By Developer. Wherever in these restrictions the name of Hernando Beach, Inc. appears this shall refer to and mean Hernando Beach, Inc. or its assignee, Hernando Beach Unit 13-B Property Owners Association, Inc. (a corporation not for profit), after assignment of the rights and interest of Hernando Beach Inc. under this Restriction Agreement over to the said Hernando Beach Unit 13-B Property Owners Association, Inc.

25. Attorneys' Fees. In any proceeding brought to enforce this Agreement or arising out of or relating to this Agreement, whether at law or in equity, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred, including fees for appeals.

To have and to hold the same together with all of the hereditaments and appurtenances thereunto appertaining unto the owners of the lots in Hernando Beach, Unit 13-B and 13-C. and all utilities serving Hernando Beach, Unit 13-B and 13-C. and their respective heirs, personal representatives, successors and assigns.

In witness whereof, this Modification and Restatement of Restriction Agreements was executed on this 14th day of December, 1994.

Sign In Our Presence:
S/B: Shirley Aiken
S/B: Peggy S. Sigler

Hernando Beach, Inc.
S/B: Charles M. Sasser,Jr. President

State of Florida
County of Hernando

The foregoing instrument was acknowledged before me by Charles M. Sasser, Jr., President of Hernando Beach, Inc., a Florida Corporation, who is personally known to me and who did not take an oath, this 14th day of December, 1994.

Official Notary Seal
Shirley Aiken
Notary Public State of Florida
Commission No. CC319416
My Commission Exp.Oct.14.1997

App.38

HERNANDO BEACH SOUTH PROPERTY OWNERS ASSOCIATION
PO BX 3607
SPRINGHILL FLORIDA 34611-3607
April 18,2000 File as exhibit
Hired by vote, during litigation management company

Ms N Loren
4065 Jewfish Drive
Hernando Beach Fl 34607
Dear Ms Loren
Re; Property Violation (s) **First Notice**
A recent inspection of the property at 4065 Jewfish Dr has shown the following violation (s) of the Association's Declarations ;i.e deed restriction

1.No signs or advertisements shall be displayed on lot ,right of way or any other part of subdivision
We are ,therefore asking that you advise us when correction action will be taken ,Please let us hear from you by May 05,2000
If we may be of any assistance do not hesitate to contact us.(352) 686-7940 Your attention to this matter and understanding of this request will be greatly appreciated.
For Hernando Beach South Property Owners Association
s/B Barry Lemke LCAM
Community Mangement Associates
Chrono File;Executive Committee property file
Reported update community meeting on lien issued on homes and collected attorney fees and fines
35 other letters in legal file 3,Law Cases using Florida Homeowner Statue {statue State Action}**During deposition told by association total ban on any signs.**

App 39

ST PETERSBURG TIMES NEWSPAPER
STAFF WRITER
SAUNDRA AMRHEIN

COUNTY SET TO APPEAL SIGN RULING
A JUDGE 'S DECISION THAT THE COUNTY WAS WRONG TO TRY TO REGULATE THE MESSAGE ON MAN'S SIGN WORRIES OFFICIALS

Expressing concerns that an unfavorable court ruling in a neighborhood sign squabble could have consequences for the entire county, official agreed Wednesday to try to overturn decision.

The County Commission voted unanimously during its monthly land use meeting Wednesday last week 's decision by County Judge Peyton Hslop who ruled that part of the county 's sign ordinance was unconstitutional . Hyslop agreed with Spring Hill resident Stefan Sieckowski 3011 Waterhill Dr Springhill Florida that signs in the man 's yard railing against a neighbor amount to freedom of speech .Hyslop said Stefan Sieczkowski could continue to post signs on his law and car regarding a decade long feud with Edward Murray neighbor employed county water management. Commissioner worried that the ruling could undermine the entire sign ordnance which they adopted a last year ago to cut back on the hodgepodge of political sign blanketing residential lawns.

What we were trying to do when we were putting this sign ordinance together was to limit political graffiti Chairman Commissioner Paul Sullivan ,State Actor Hernando County

The ordinance says residents may post only 2by 1 foot sign on residential however 45 days before state and federal election they can post unlimited . Hyslop found that the county was trying to regulate the message which

include county statement Paul Sullivan found statement pretty offensive but my position was he could put all in a smaller sign .Kent Weissinger an assistant county attorney said courts have upheld cases allowing local governments the ability to limit the time and location of speech such as political signs as long as the speech is not banned. Local governments are not allowed to discriminate on a sign's message. He advised the commissioner's he think the judge misread the definition of a sign ordinance .Were concerned the extension of ruling will apply to more than just residential sign **The ruling will be appeal to a three judge panel of the 5th District Court OF Appeal** .

If the message doesn't fit on a 2X1 sign you are restricting the speech or the federal political idea overcomes the homeowner before 45 days .Homeowner payee of property tax for county commissioner employment will restrict free speech on private property that political rights belong to the people federal voter right . This community claim clutter sign if there is a problem of large amount of signs there is a problem the association needs to solve ,and next was time ,place ,size restriction as Hernando County Ordinance a legal loop hole to restrict speech not allow the flow of free speech. Time and place and size is mostly used in business zone for safety of time on lighted signs , Place set back ,size for commercial signs for sidewalk and roadway for vehicle The community had a total ban on any sign but motion to the federal court they approved sign for the developer but haven't found one they like for twenty years for the homeowner Perhaps the plaintiff should have said something bad about the community and said our home is for sale and telephone number post in front of our private property . Blum v Yaretsky 457 U.S 991 1 Led [Encouragement } either overt or covert the choice must be deemed to be that of the State

.How will the deed recorder, state actor approve partial restriction on speech in a rural community on private property county easement ,public street and county services without any safety concerns without a restriction on the entire county of homeowner .**All people in Hernando County have the same property rights according to the Florida and U.S Constitution.**

App.42
United States District Court
Middle District of Florida
Tampa Division

Nicole Loren,
et al.,
Plaintiffs,

vs. Case No. 8:99-CV-2413-T-17E

Charles M. Sasser, Jr.,
et al.,
Defendants.

_____/

Order

This cause is before the Court on Plaintiff's Amended Motion for Preliminary Injunction (Dkt. 24.) The Court directed that Defendant Hernando Beach South Property Owners Association, Inc. file an expedited response by March 10, 2000. No response has been filed.

Plaintiff's request for preliminary injunction on her First Amendment Claim (Count V) is limited to Defendant Hernando Beach South Property Association, Inc.

Plaintiff Loren owns a home in the deed- restricted community of Hernando Beach South (in Hernando County, Florida) which she has for sale. However, Plaintiff cannot place an on site "for sale" sign on her home without violating the community's judicially-enforceable deed-restriction ban on all homeowner signs. Defendant homeowner associations, Hernando Beach South Property

Owners Association, Inc. has refused to waive enforcement of sign ban in response to Plaintiff Loren's request. In response to Loren's alternative motions (for summary declaratory judgment, permanent injunction and fees, or, in the alternative, preliminary injunction) no Defendant has defended the constitutional validity of this deed-restriction scheme. Defendant Hernando Beach South Property Owners Association, Inc. has filed no response and defendant Charles M. Sasser, Jr. (President of Hernando Beach, Inc.) Have filed responses limited to claiming no responsibility for the sign ban on the basis that they had transferred authority for enforcement or modifications of the deed restrictions to the defendants homeowners association before Plaintiff Loren's request. Since Loren's Amended motion for preliminary injunction does not seek relief against Defendant Sasser and Hernando Beach, Inc., the Court need not resolve their claims of immunity at this time.

The Court has previously recognized that judicial enforcement in Florida of rules and restrictions banning or restricting free speech constitutes state action. As such, the constitutional validity of the speech ban or restriction is properly subject to federal judicial scrutiny under the First and Fourteenth Amendments in action under 42 U.S.C. Sec. 1983. Gerber vs. Longboat Harbor North Condominium, Inc., 724 F.Supp.884 (M.D. Fla. 1989), modified on reh. On other grounds, 757 F.Supp. 1339 (M.D. Fla. 1991). In this case, the substance of the Hernando Beach South ban on homeowner signs violates the First Amendment as does the restriction's application bar Plaintiff Loren from placing a "for sale" sign on her home. City of Ladue v. Gilleo, 512 U.S. 43, 114 S. Ct. 2038, 129 L.Ed.2d (1994); Linmark Associates, Inc. v. Willingboro, 431 U.S. 85, 97 S. Ct. 1614, 52 L.Ed.2d 155 (1977).

Each day that Plaintiff is denied the right to place an on

site "for sale "sign on her property she suffers immeasurable and irreparable harm. Elrod v .Burns 427 U.S 347,373-374,96 S.Ct. 2673,2690 49 L.Ed .2d 546 (1976)("The loss of First Amendment freedoms, for even a minimal period of time ,unquestionably constitutes irreparable injury.") Plaintiff has suffered irreparable injury and ,given the potential inadequacies of a declaratory judgment to prevent recurring harm, likely will continue to suffer irreparable harm absent Defendant Hernando Beach South Property Owners Association ,Inc being enjoined from interfering with Plaintiff's rights to place an on site "for Sale "sign on her property.

The public interest would not be disserved by allowing Plaintiff to communicate to the buying public basic, truthful information about her home being on the market through this venerable medium pending entry of final judgment .Further ,the equities and hardships in granting or withholding injunctive relief clearly favor protecting Plaintiff 's basic right to so advertise the sale of her home .Accordingly it is

ORDERED that:

1. The Amend Motion for Preliminary Injunction (Dkt .24) is granted.
2. Defendant Hernando Beach South Property Owners Association, Inc. is hereby enjoined from enforcing in any manner the deed restriction banning homeowner signs with respect to Plaintiff Loren's right to place customary "for sale " signage on her property pending the entry of final judgment in this action.
3. Given the absence of opposition by this Defendant to Plaintiff's pending motions ,which further underscores the probability of Plaintiff succeeding on the merits of her First Amendment claims ,the absence of proof or of monetary harm from the grant of preliminary injunctive

relief, and the risk of further injury to Plaintiff's rights by the imposition of otherwise unwarranted security, no security shall be required of Plaintiff. University Books and Video ,Inc v Metropolitan Dade County,333 F.Supp.2d 1364,1374 (S.D Fla 1999).

Done and Ordered in Chambers ,in Tampa ,Florida on this 14 th day of March ,2000.

S/B Elizabeth A .Kovachevich
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NICOLE LOREN et .al
Plaintiffs,

vs. Case No .8:99-CV-2413-T-17E
CHARLES M SASSER JR., Filed March 20,2000
et al.,

Defendants.
_____/

ORDER VACATING INJUNCTION

This cause is before the Court sua sponte . The Court enter an Order granting the Amend ed Motion for Preliminary Injunction (Dkt .24) on March14,2000.The order stated that Defendant Hernando Beach South Property Owners Association did not file a response to the Amend Motion. Defendants did file a response to the Amended Motion on March 10,2000 (DkT 26).Accordingly it is ORDER that the Order granting Amended Motion for Preliminary Injunction (Dkt .27) is vacated, and the Court will give further consideration the Amended Motion (Dkt .24) and the response (Dkt .26). Done and Order in Chamber in Tampa Florida on this March 20,2000
S/B Elizabeth A Kovachevich U.S District Judge

App.46

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NICOLE LOREN et al.
Plaintiffs,
vs.

CASE NO 8:99-2413-T-17 B
Filed April 11,,2000

CHARLES M SASSER JR
et al.,
Defendants.
_____/

ORDER DENYING AMEND MOTION FOR PRELIMINARY INJUNCTION

This cause is before the Court upon Plaintiffs' Amended Motion and Memorandum for Preliminary Injunction (Dkt.24) and the response of Defendants Hernando Beach South Property Owners Association ,Inc (Dkt 26) .The Court finds that Plaintiffs' Amend Motion For Preliminary Injunction should be denied. The Court finds Plaintiffs have not met their burden as to the substantial likelihood that Plaintiffs will prevail on the merits.

I. Facts

Plaintiff Loren is a co -owner of a Hernando Beach South Home ,who wishes to place a "for sale 'sign in her yard. Hernando Beach is a "deed restricted "community that prohibit s displaying signs unless approved by Hernando Beach South Property Owners Association ,Inc. Plaintiff requested permission by letter but was denied. Plaintiff asserts that Defendants refusal to waive the applicable deed restriction coupled with "the threat and risk of judicial action "constitutes a violation of her First Amendment right of expression .

II Standard For Granting A Preliminary Injunction

A preliminary injunction authorized by Rule 65 Fed R Civ .P is not granted as a matter of right ,but is an

extraordinary remedy and must be sparingly granted. Black & Decker Corp. v American Standard Inc .,679 F Supp.1183 (D.Del.1988).The issuance of a preliminary injunction falls within the sound discretion of a district court. Frio Ice ,S. A v Sun fruit Inc.,918 F2d 154,159 (11th Cir 1990). A district court should grant a preliminary injunction only if the moving party clearly shows four factors:1)a substantial likelihood that the moving party will prevail on merits;2) that they will suffer irreparable injury if an injunction is not issued; 3)that the potential injury outweighs the possible harm to the opposing party ;and 4)that the injunction would not be adverse to the public interest. Id at 159.Further ,since an injunction is an extraordinary and drastic remedy ,it will not be granted unless the movant clearly carries the burden of persuasion as to all four prerequisites. United States v Jefferson County,720 F2d 1511,1519 (11th cir 1983)

The Court find that Plaintiffs have not met their burden of persuasion as to the likelihood of success on the merits. Plaintiffs maintain that the deed restriction on homeowner signs violates the first Amendment right to free expression. The threshold question in determining the validity of Plaintiffs' constitutional claim is whether state action exists. Plaintiff must sufficiently establish a close nexus between the challenged activity and the state that is so intertwined that the activity may be fairly attributed to that of the state. Jackson v Metropolitan Edison Co ,419 U.S. 345 (1974).Plaintiff states that the "sign ban" implicates state action ,referring to the potential litigation that could follow from violating the deed restriction.

Plaintiffs request that the Court classify Defendants refusal to wave judicial enforcement of the deed restriction as state action, sufficient to subject private conduct to constitutional scrutiny, expands First Amendment protection beyond its appropriate application

Persuasive authority suggest that the mere possibility of judicially enforced private covenants does not satisfy the "state action" requirement of the fourteenth Amendment. See Goldberg v 400 East Ohio Condominium Ass'n,12 F Supp2d 820,821 (N.D IIll.1998) ;See Quail Creek Property Owners Association, Inc v Hunter,538 So2d 1288 (fla 2d DCA 1989). In Quail ,a homeowner brought suit attacking the constitutionality of restrictive covenant that purportedly prohibited him from placing a 'for sale sign on his property. The Circuit Court declared that the protective covenant violated protection on its face. However ,the District Court of Appeal held that neither the recording of a protective covenant in public records nor its possible enforcement in state Court constituted sufficient "state action "to render parties 'purely private contracts unconstitutional.

For the reasons stated ,the likelihood that Plaintiff could persuade the Court to classify a party's refusal to waive litigation as state action is highly questionable .Plaintiff has not clearly carried her burden of persuasion on this threshold question.

Even if this Court determined that state action exists Plaintiffs have not met their burden of persuasion as to the likelihood of success on the merit because the deed restriction does not completely ban commercial speech. Instead signs may be displayed after approval by Hernando Beach South Property Owners Association ,Inc .Plaintiff maintains or at least implies ,that the deed restriction ,that the deed bans commercial speech entirely. The pertinent part of the deed restriction states,"[n]o signs or advertisements shall be displayed on the lots ,right of way ,,or any part of the Subdivision ,**except as specifically designated and approved by Hernando Beach Inc**" This provision appears on it s face to be legitimate a time ,place ,or manner restriction to ensure the neighborhood's aesthetic appearance .The Eleventh Circuit Court of

Appeal s recognizes a state 's substantial interest 'in preserving aesthetics .Don 's Porta "substantial interest "in preserving aesthetics. Don 's Porta Signs Inc v City of Clearwater 829 F 2d 1051,1054(1987)

Absent from Plaintiffs' Amended Motion for Preliminary Injunction and supporting Memorandum are any argument or supporting cases that address the constitutionality of this time ,place or manner restriction. Instead ,Plaintiffs merely assert the lack of an adequate substitute "for on site advertising .This does not persuade the Court that Plaintiffs' right to expression has been violated.

For the reason stated ,this Court can not say with substantial certainty that Plaintiffs will prevail on their claim .Because the first factor is not established to the Court 's satisfaction, it is unnecessary to address elements two through four. Accordingly for the reasons stated in this opinion ,it is

ORDER that the Amend Motion for Preliminary Injunction (Dkt .24) is denied.

Done and ordered in chambers in Tampa Florida, on this 11 th day of April ,2000

S/B Elizabeth A Kovachevich
United States District Judge

App.50

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NICOLE LOREN,BETTIE J NEWBOLD
AND CHARLENE JANKE by and through
VERONICA AGUIRRE,Plaintiffs'

Case No.8:99CV-2413-T-30 E
Filed January 31,2001
(Dispositive Motion)

vs.

CHARLES M SASSER JR,
HERNANDO BEACH INC
and HERNANDO BEACH PROPERTY
OWNERS ASS 'N INC Defendants'

_____/

MOTION FOR SUMMARY ON BEHALF OF DEFENDANT, HERNANDO BEACH INC AS TO COUNTS I, II, III AND IV OF PLAINTIFF COMPLAINT WITH SUPPORTING MEMORANDUM OF LAW

Comes now the defendants ,Hernando Beach Inc. ,hereinafter" Hernando Beach ",by and through its undersigned attorney and files this motion for Summary Judgment pursuant to Rule 56,Federal Rules of Civil Procedure ,and as grounds therefore would state:

Facts

1.Hernando Beach South is a waterfront community located in Hernando County that was developed by "Hernando Beach" All homes in Hernando Beach South fall under OSHA and Fema regulations in which all homes have to be built on stilt or least a Four -foot elevation. Plaintiffs' house was built on four -foot elevation.

2,Hernando Beach South is a deed -restricted community of approximately 425 lots.

3. The community is controlled by deed restriction that are

recorded in Hernando County Florida(exhibit 1)
4.The deed restriction run with each individual lot and each and every owner has right of enforcement(Sasser depo pg .35
5. Paragraph 1 of the deed restrictions states:
Improvement .No building ,addition ,accessory ,fence .....shall be commenced ,erected, placed or maintained upon lot ..until complete written plans and specifications showing the nature ,kind, size (including the size and square footage of each separate room or area) driveway layout ,shape ,color ,height ,floor plan, materials ,location and approximate costs of same have been submitted and approved....
6.In February ,1997 ,plaintiff moved into 4065 Jewfish Drive in Hernando Beach South (Plaintiff s complaint paragraph 22)
7.Plaintiff Nicole Loren planned to move into the home with her mother. Bette Newbold and her aunt Charlene Janke is mentally handicapped and blind.
8. Before moving into 4065 Jewfish Drive the three of them lived at 2859 North Monitor in Chicago Illinois where they lived for approximately 8-15 years There were no handicapped accessibilities in that building even though it had a basement first and second floor and during the time they lived either in the basement or on the first floor.(Loren depo .pg 28)
9.When plaintiff left Chicago in 1997 ,they had only two weeks to find a house and they purchased at 4065 Jewfish Dr for 93,000 at a foreclosure (Loren depo pg 31;106)
10.Plaintiff did not hire an agent nor did they have an agent for purchase of the home at 4065 Jewfish Drive (Loren depo pg 29)
11. Plaintiff Nicole Loren ,does not have any physical disabilities which would require any accommodation (Loren depo pg .18
12.While at 4065 Jewfish Drive ,Plaintiff never became

involved in the homeowners association ,never attended any meeting ,never voted and never requested a special meeting of her homeowners to address any of the issues involved in this complaint.(Loren depo pg 42)fighting in parking lot and at association meetings

13.Plaintiff Nicole Loren does not have any physical disabilities which would require any accommodation (Loren depo pg 18

14.From the time plaintiff moved into 4065 Jewfish Drive plaintiff Bette Newbold ,was never in need of walker or wheelchair , Bette Newbold was never prescribed a wheelchair and testified that request for accommodations were for Charlene and not for her .Bette Newbold was able to enjoy the house the way it was (Loren depo pg 24 ,Newbold depo pg 16,33)**Plaintiff states question misunderstood and words twisted to service a purpose**

15.Plaintiff first request was a verbal request for front yard chain link fence on July 08,1998.According to plaintiffs ,the fence had to be in the front yard because Charlene Janke needs 'Privacy" and because she moves her arms and somebody will think she is having a seizure .Further plaintiffs did not want to bring attention to having handicapped person in the community (Loren depo pg 61,63)**Plaintiff states safety, security reasons if alone in resident, and Charlene blind person moves her hands feeling the wind)**

16.This verbal request was made to an individual named Melody Merritt.

17 At the time plaintiff made the request for front yard exterior there were no other front yard fences in the neighborhood and all fences were either on the side or in the rear of the home.

18.There were any design submitted by the plaintiff for fence(Loren depo pg 709 chain link county code wind zone

19.The first written request for fence was made by plaintiff

Nicole Loren July 29,1998 in which the letter states ;
The fence will be used for visual privacy and noise reduction ,our rights to aesthetic decoration ,security ,and serve as a marked boundary of private property especially for insurance liability reasons ,and for proving a safety enclosure for domesticated animals .It is our intent to establish security ,protection and privacy of two handicapped person living in our dwelling

20.Fenceing would be allowed along sides and back of the property (Loren depo pg 67)

21 On September 10,1998 plaintiffs made their first request for deck ,ramp and fence at which time they submitted a one page drawing (Loren depo pg 84)

22. The request for a deck ramp and fence was denied by Hernando Beach due to inadequate drawings (Loren depo pg 87 exhibit 4)

23.Plaintiff received a deficiency report from building department relating to deck in September of 1998 (Loren depo pg 111)

24.October 03,1998 plaintiff Bette Newbold and Charlene allegedly fell on the interior steps in the garage at their home located at 4065 Jewfish Drive . (Loren depo pg 88-89

25 Prior to October 3,1998 Charlene Janke could get in and out of the house without a wheelchair (Loren depo .pg 95)

26.As of October 3,1998 Bette Newbold could get in and out of the house without the necessity of a wheelchair (Loren depo pg 95)

27.Plaintiff decided to move from the house located at 4065 Jewfish Drive on October 03,1998 after Bette Newbold and Charlene Janke fell down the garage steps(Loren depo pg 127)

28 The house located at 4065 Jewfish Drive is a two story house and there were never any handicap accommodation in the interior of the home **(Loren depo pg 98-99)**

29 .On October 08,1998 plaintiff Nicole Loren submitted additional drawings of a Walter Dutcher which was five

days after plaintiff decided to move from the home (Loren depo pg 98-99 The Walter Dutcher drawing indicate that distance of the ramp has to be adjusted due to slope (exhibit 5)Hardly with personal injuries
30. Plaintiff did receive a building permit on October 8,1998 apparently after the deficiencies were corrected.**(Loren depo pg 113)**
31 The building permit was never submitted to "Hernando Beach " (Sasser Depo pg 79-80)
32 Plaintiffs sold their house on July 7,2000 for $140,00 (Exhibit 6)
33.Plaintiff never requested simply a ramp for ingress and egress out of their home (both request separate on plans)

GROUNDS FOR SUMMARY JUDGMENT

34.Count I and II of Plaintiffs' complaint seek damages pursuant to section U.S.C & 3604 (f) (3) (a) and (b) and the Florida Housing Act for the refusal of permission to construct a chain Link fence." Hernando Bch "is entitled to Summary as to Count I and II for the following reason:

A. It is undisputed that Bette Newbold was not in need of a chain link fence for enjoyment of the home and therefore has no claim whatsoever and "Hernando Beach "is entitled to a summary judgment as to her.

B There is no evidence of record demonstrating that a chain link fence was a modification that was necessary to afford Charlene Janke enjoyment of the premises

C The home owned by plaintiff in a deed restricted residential community, is exempted by 42 U.S.C &3603 (b) (1) At the time plaintiffs purchased the home .there was no need for any modification ,they remained there for approximately (seventeen month?) before requesting any modification with no apparent change in circumstances as it relates to the need for chain link fence.

E There is no evidence of record demonstrating any discriminatory intent.

F There is no showing in the record evidence of any

discriminatory impact

G All the evidence of record demonstrates that deed restriction were applied consistently and evenly throughout the community.No documents available

H "Hernando Beach had legitimate non discriminatory reason for denial of the fence request including:

1.The first was verbal request made on July 08,1998 which is not the proper procedure under paragraph 1 of the deed restrictions

2. The first written request for chain link fence was made on July 29,1998 which addressed need for a chain link fence for privacy ,noise reduction ,aesthetic decoration ,security and to mark boundaries of the private and to provide a safety enclosure for domesticated animals as well as security, protection and privacy. Privacy of two handicap persons was mentioned only in the last part of letter and appears to be a collateral need. The letter also did not comply with paragraph 1 of the deed restriction in requesting the modification .

3.At the time request was made and even up until today there are no front yard fences in Hernando Beach South and all fences are on the side and backs of the individual homes.

4.Plaintiffs would have been allowed to fence the sides and backyard of their property.

5.There was a permit submitted nor any drawing regarding the requested fence. No request given

6. There has no showing that the chain link fence accommodation was necessary to insure equal housing opportunity for Charlene Janke. The same accommodation would have been accomplished through a side yard and back yard fence.

7.At the time of request ."Hernando Beach " owned a fiduciary duty to approximately 424 other homeowners to insure that deed restriction were consistently enforced and had to weigh the plaintiff's submission of a request for chain link fence in the front yard without any documentation whatsoever against their fiduciary duty owned to the homeowners. [I]A request for an accommodation or modification is reasonable only if it does not require a fundamental alteration in the nature of deed restriction or undermine it purpose.

35. Count III and IV of Plaintiffs complaint seeks damages pursuant to 42 U.S.C & 3604 (f) (3) (A) and (B)and the Florida Housing Discrimination Act for refusal of permission to construct a ramp /deck ."Hernando Beach" is entitled to a summary judgment as to Count III and IV for the following reason:

A . The undisputed fact demonstrate that Bette Newbold was not in need of this accommodation for full enjoyment and use of the home and therefore summary judgment should be entered as to the claims of Bette Newbold .

B. plaintiff first make a request for deck and ramp in their front yard and that time a one page drawing.

C The request for the deck and ramp was denied by Hernando Beach due to inadequate drawings

D .Plaintiff received a deficiency report from Building Department relating to deck and ramp in September,1998

E. Plaintiff did not submit an additional request for deck and ramp until October ,8,1998at which submitted drawing of a Walter Dutcher .These drawings indicated that there was a problem with the slope and distance of the ramp and that had to be adjusted.NO

F. "Hernando Beach "again denied the request due to the slope of the ramp and also the fact that decks were only allowed in the back of the residences

G plaintiff did receive a building permit for deck and ramp on October 8,1998 but never provided that to "Hernando Beach " There were no further request or discussion. **Paid balance of permit 10/08/1998**

H Plaintiff have demonstrated no evidence suggesting that a deck in the front yard was a necessary accommodation for enjoyment of home.

I The house owned by plaintiff is a private residence in a deed restricted community and is exempted by 42 U.S.C &3603(b) (1).

K There is no evidence of record demonstrating any discriminatory intent nor a showing of any discriminatory impact

L All evidence of record demonstrates that the deed restrictions as it relates to deck were applied consistently and evenly throughout the community.

M "Hernando Beach " had legitimate ,non discriminatory reasons for denial of ramp and deck including:

1.All deck were to be in the backyard.

2. There was no building permit provided

3. There has been no showing that ramp and deck accommodation was necessary to insure equal housing opportunity for Charlene Janke. The same accommodation could have been achieved through a back yard deck .

4. There was never a written submission for ramp and deck as required by paragraph one of the deed restriction until October 8,1998,That written submission was submitted after the plaintiffs decided to move from the residence and that written submission also contained deficiencies noted in the submission themselves as to the grade and length of ramp in question .No further drawings or designed were submitted to Hernando Beach

5.At the time of the request for deck and ramp "Hernando Beach " owned a fiduciary duty to approximately 424 other landowners to insure that the deed restrictions were

consistently enforced and had to weigh the plaintiff's request for a deck and ramp in the front yard against their fiduciary duty to the homeowners

MEMORANDUM OF LAW

Defendants 'Hernando Beach "hereby files this memorandum of law pursuant to Local Rule 3.01 in support of its Motion for Summary Judgment and states:

AS TO REQUEST FOR FRONT YARD CHAIN LINK FENCE

1. There has no showing that plaintiff ,Bette Newbold was in need of chain link fence in the front yard in order to afford her full enjoyment of the premises or that such was necessary to afford her equal opportunity to use and enjoy the dwelling. As such," Hernando Beach"is entitled to judgment as a matter of law.

Count I and II of plaintiff 's complaint seeks damages pursuant to 42 U.S.C &3604(f) (3) (a) and (b) Section 3604 (f) (3)(a) and (b) provides in pertinent p

For purpose of this subsection ,discrimination includes:(a) a refusal to permit,, at the expense of the handicapped person reasonable modification of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of premises....(b)a refusal to make reasonable accommodations and rules ,policies ,practices or services ,when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Based upon her own testimony ,plaintiff Bette Newbold ,was not in need of a chain link fence for her to have full enjoyment of premises or have equal opportunity to use and enjoy the dwelling .Specifically Bette Newbold testified that she did not need any additional accommodation to enjoy the home ,was never in need of a wheelchair nor walker while she lived at the home ,and that the fence and decking was for Charlene Janke .As

such," Hernando Beach is entitled to summary judgment as to the claim of Bette Newbold as matter of law.

II. There was no written submission for a request for a front yard chain link fence pursuant to paragraph one of the deed restrictions.

The record evidence filed before this Court clearly shows that that there was a deed restriction as it relates to fences ."A fence "was define in paragraph one of the deed restriction as an improvement that required submission of complete written plans and specifications showing the nature ,kind ,size ,shape, height, and approximately cost of the fence. This requirement of a written submission was clearly set forth in paragraph one of the deed restriction and was a condition to obtaining approval by homeowner. The undisputed facts demonstrate that this condition was never met by the plaintiffs as it relates to their request for front yard chain link fence and therefore" Hernando Beach "is entitled to a judgment as a matter of law as it relates to Plaintiffs" request for a front yard chain link fence.

III A chain link fence in the front yard was not a reasonable modification that was necessary to allow Charlene Janke full enjoyment of the premise or necessary to afford her equal opportunity to use and enjoy a dwelling.

Plaintiff requested that the chain link fence be located in the front yard even through they were aware that no fences were allowed in front yard of any of the residence located in Hernando Beach South. There has been absolutely no showing by the plaintiffs that a chain link fence in the front exclusively was necessary for Charlene Janke who is blind and mentally handicapped to enjoy the premises. There has been absolutely no showing that the fence was a reasonable accommodation that had to be in the front as opposed to the back yard.

Further the evidence of record demonstrates that the deed restriction as it relates to fences was

applied consistently throughout the community and applied to each and every homeowner .In Oxford House ,Inc v Town of Babylon 819 F Sup 1179 (ED .NY 1993) the court held that an accommodation respecting municipal zoning laws is reasonable under 42 U.S.C &3604 (f) (3) (B) if it does not cause any undue hardship or physical or administrative burden on the municipally and does not undermine the basic purpose that the zoning ordinance seek to achieve.

In addition in Liddy v Cisneros 823 F Supp164 (S.D.N.Y.1993)the court held that an accommodation in an entity's rules ,policies or practices is not reasonable if it either imposes undue financial and administrative burden on the entity making the accommodation or requires a fundamental alternation and the nature of the program in question.

In the matter presently before this court ,the plaintiffs requested a chain link fence in the front yard which was certainly a fundamental alteration of the nature of the deed restriction as it relates to fences . It is important to note that the plaintiff were never denied a fence but were denied a chain link fence in their front yard due to the fact they never submitted any written drawing as required by deed restriction all fences were to be in the side and rear of residences. This needs to be considered in light of the reasons stated by plaintiffs in their first written request dated July 29,1998 which included visual privacy and noise reduction ,our rights to aesthetic decoration ,security and service as a marker boundary of private property .especially for insurance liability reasons and for providing a safety enclosure for domesticated animals". The only justification for a chain link fence that could feasibly be presented by the plaintiffs is their desire to leave Charlene Janke ,a blind and mentally handicapped individual, alone without any supervision whatsoever for extended period of time. There is absolutely no showing

made by the plaintiff that this is a necessary modification for full enjoyment of the premises and as such "Hernando Beach "is entitled to a judgment as a matter of law

IV The evidence of record before this court fails to demonstrate any discriminatory intent whatsoever on the part of "Hernando Beach ' or discriminatory impact. Assuming that plaintiff establish that the proposed front yard fence accommodation was reasonable and necessary to insure equal housing opportunity, Hernando Beach had legitimate and non discriminatory reason for the denial of the front yard fence

In the matter presently before this court ,there is absolutely no evidence of discriminatory intent nor discriminatory impact. In fact the record evidence demonstrates that the deed restriction were consistently applied as it related to plaintiffs request for a front yard fence .even assuming that the plaintiffs were able to make a showing that the desired accommodation was reasonable and necessary to insure equal housing opportunity ."Hernando Beach "demonstrated legitimate and non discriminatory reason for its conducts which is not merely a pretext for discrimination and therefore entitled to a judgment as a matter of law. The non discriminatory reason for the denial of front yard fence include:

1. Plaintiff first made a verbal request and such a request fails to comply with paragraph one of the deed restriction

2.Plaintiff first written request was July 29,1998 which requested a fence for numerous reasons that were not associated with any handicapped accommodation whatsoever.

3The written request also didn't provide the specifications as required by paragraph one of the deed restrictions.

4.There are no front yard fences allowed in Hernando Beach South and all fences are on the sides and backs of individual homes.

5. There was never a permit submitted or drawing regarding the requested fence.

6. There was no showing that the chain link fence in the front yard was necessary to insure equal housing opportunity for Charlene Janke and why the same accommodation could not have been accomplished through a side yard and back yard fence.

7 A side or back yard fence would have been permitted.

In determining whether conduct is violative of 42 U.S.C &3604the court in Casa Marie Inc v Supreme Court of Puerto Rico 988 F2d 252 (1st cir 1993)recognized a burden shifting approach .In Casa Marie the court held that once the plaintiff establish a prima facia case of discrimination by showing dispute impact ,the burden shift to the defendant to demonstrate a legitimate ,non discriminatory reason for its conduct or in the case of a government defendant, to show that the actions furthered a legitimate ,bonifide government interest and that no alternative would that interest with less discriminatory affect. .Once the defendant made a showing the burden shifts to plaintiff to establish that the reason asserted by the defendant is merely a pretext for discrimination Id at 254

The record before this court clearly demonstrates numerous non discriminatory reasons for refusal to allow a chain link fence in the front yard. Plaintiffs have failed to establish that these reason were merely a pretext for discrimination and therefore "Hernando Beach" is entitled to judgment as a matter of law. See Robinson v City of Friendswood 890 F Supp 616 (S.D Tex 1995) and Sievert v City of Novalle 4 Nat'l Disability Law Rep .P82,1992 W.l 500514 (N.D Cal 1992

AS TO FRONT YARD DECK AND RAMP

V There has been no showing that plaintiff Bette Newbold ,was in need of a ramp and front yard deck in order to afford her full enjoyment of the premise or that such was necessary to afford her full equal opportunity to use and enjoy the dwelling .As such," Hernando Beach" is entitled to judgment as a matter of law. Plaintiff Bette Newbold ,testified that she was not in need of a wheelchair nor walker at time that she occupied the premise and that she did not need any additional accommodation to enjoy the home .In fact ,Bette Newbold specifically testified that she was not in need of the ramp and decking but that this request was for Charlene Janke. As such "Hernando Beach " is entitled to a summary judgment as to the claim of Bette Newbold as a matter of law **VI The plaintiffs failed to submit complete and adequate drawings pursuant to paragraph one of the deed restriction and further failed to obtain a building permit for deck and ramp and submit that "Hernando Beach " for its approval. As a result "Hernando Beach " is entitled to a judgment of a judgment as a matter of law"** Plaintiff made their first request for a deck and ramp on September 10,1998.It is still unknown and never completely explained by plaintiffs as to whether this request for a front yard deck and ramp was in addition to or in place of the request for a front yard chain link fence. In any event their request for a deck and ramp was submitted with a one page sketch or drawing which was completely inadequate pursuant to paragraph one of the deed restrictions .This request was denied by "Hernando Beach " and plaintiffs also received a deficiency report from the building department relating to their deck request in September of 1998. Plaintiff did not resubmit additional drawing until October 8,1998 requested Sasser

and those drawings were prepared by a Walter Dutcher. The drawing prepared by Walter Dutcher completely abandoned the initial submission for a deck and ramp. The written submission for Walter Dutcher called for a front yard ramp and deck and those drawings specifically states that the ramp as drawn needed to be adjusted so as to not exceed a seven -degree slope. Based upon the fact that the drawings did not provide for a ramp with the appropriate building permit had been obtained and presented to "Hernando Beach " and there was no explanation as to why the deck could not be in the back yard this request was denied. Plaintiff apparently did ultimately receive a building permit for deck and ramp but this was never presented to "Hernando Beach ".
In Oxford House Inc v City Of Virginia Beach VA. 825 F Supp 1251 (ED VA 1993) the court recognized the necessity of obtaining a permit for the requested use and the fact that a claim is not right for adjudication until the requested permit has been obtained or at least requested and denied .In the matter presently before this court, there was absolutely no indication present ed to "Hernando Beach " at the fime of its denial that a building permit had been obtained. In fact up until the time of denial by "Hernando Beach ".there had been nothing issued by the building department except for a deficiency report .In light of no building permit and an indication on the drawing themselves that the ramp as drawn was not adequate there was simply no way that "Hernando Beach " could have provided approval without exposing itself to additional liability. Alternatives such as a chairlift which are contained in other homes in the community and or a wraparound ramp from the back are actually safer alternatives than what was submitted by plaintiffs .U.S v Freer 864 F Supp 324 (W.D .Ny 194)

VII A front yard* [ramp] ***and deck was not a reasonable modification that was necessary to allow Charlene Janke full enjoyment of the premise or necessary to afford her equal opportunity to use and enjoy the dwelling.**

Plaintiff requested that a ramp and deck be located in the front yard of their premises even through they were no deck were allowed in the front yard and all decks in Hernando Beach south were located in back of the residences .It is important to note that Plaintiff never requested simply a ramp but demanded a ramp and a front yard deck exclusively was necessary for Charlene Janke who is blind and mentally handicapped ,to enjoy the premises. There is absolutely no showing that this request was a reasonable accommodation that had to be in the front yard as opposed to the back yard.

The evidence of record demonstrates that the deed restriction as it relates to the front yard ramp and deck was applied consistently throughout the community and applies to each and every homeowner. In Oxford House Inc v Town of Babylon 819 F Supp 1179 (E,D NY 1993) the Court held that an accommodation respecting municipal zoning laws is reasonable under 42 U.S.C &3604 (f) (3) (B) if it does not cause any undue hardship or physical or administrative burden on municipality and does not undermine the basic purpose that the zoning ordinance seeks to achieve .See Liddy v Cisneros 823 F Supp 164 (S. D. NY 1993)

In the matter presently before this court, plaintiffs requested a ramp and deck in the their front yard which was certainly a fundamental alteration of the nature of the deed restrictions as it relates to front yard which was certainly a fundamental alteration of the nature of the deed restriction as it relates to front yard decks .It is

important to note that the plaintiff were never denied a ramp in and itself nor any other accommodation which would allowed them ingress and egress to their home .In addition plaintiffs were never denied a deck in and of itself but were denied a deck in the front yard at the time as there had no reasonable explanation as to why a front yard deck was necessary. Come to find out through discovery ,one of the reason plaintiff did not want a deck in the back yard which would have been allowed is due to the fact plaintiffs essentially did not want Charlene Janke be seen by the neighbors .

There is simply no evidence suggesting that a front yard deck was necessary for Charlene Janke full enjoyment of the premises and to afford equal opportunity to use enjoy the dwelling .This is especially true in light of the fact that the home at 4065 Jewfish Drive has covered and screened porch allowing Charlene Janke to enjoy the "fresh air" and the house also has a backyard where a deck could have been built.

Based upon the forgoing ,there is no showing of necessity and therefore "Hernando Beach " is entitled to a summary judgment as a matter of Law.

VII The evidence of record before this court fails to demonstrate any discriminatory intent whatsoever **on part of "Hernando Beach " or discriminatory impact**

Assuming that plaintiffs establish that the proposed front yard*** [ramp]and deck accommodation was reasonable and necessary to insure equal housing opportunity." Hernando Beach " had legitimate and nondiscriminatory reason for denial of the front yard ramp and deck .

The evidence of record demonstrates that the deed restrictions were consistently applied as it relates to plaintiff request for a front yard**[ramp]and deck and there was no discriminatory intent nor discriminatory impact. Even assuming that the plaintiffs were able to

show the desired accommodation was reasonable and necessary to insure equal housing opportunity "Hernando Beach demonstrated legitimate and non discriminatory reason for the denial which is not merely a pretext for discrimination .**The non discriminatory reason for denial of front yard ***[ramp]and deck include:**

1. The plaintiff first request was crude rude sketch that did not comply with paragraph one of the deed restrictions.
2. Plaintiffs obtained a deficiency report from the building department as it related to the ramp and deck.
3. The next written submission (drawing of Walter Dutcher) were not complete in that they required change to be made in ramp "so as not to exceed a seven degree slope" **Detail only for construction**
4. There was no building permit ever provided.
5. There are no front yard decks in Hernando Beach South and all deck are on the back of residences.
6. There was no reasonable explanation related to a handicap issue necessitated the deck in the front yard as opposed to the back yard.
7. At the time the request for yard deck and ramp was made ,"Hernando Beach" owed a fiduciary duty to approximately 424 other landowners to insure that the deed restriction were consistently enforced and had to weigh plaintiff's request against their fiduciary duty to other landowners.

In determining conduct is violative of 42 U.S/C &3604 (f) the court in **Casa Marie v Superior Court Of Puerto Rico** 988 F.2nd 252 (1st Cir 1993) recognized a burden shifting approach .In Casa Marie the court held that once the plaintiff establish a prima facie case of discrimination by showing disparate impact ,the burden shifts to defendants to demonstrate a legitimate ,non discriminatory reason for it s conduct or in the case of a governmental defendant, to show that its actions further a legitimate ,bonafide governmental burden on the

municipality interest and that no alternative would serve that interest with less discriminatory effect. Once on defendant made such a showing the burden then shift to the plaintiff to establish that the reason asserted by defendant is merely a pretext for discrimination ID at 254 The record before this court clearly demonstrates numerous non discriminatory reasons for refusal to allow plaintiff a front yard ***[ramp] and fence. Plaintiffs failed to establish that these reasons were merely a pretest for discrimination and therefore "Hernando Beach " is entitled to a judgment as a matter of law. See Robinson v City Of Friendswood 890 F 616 (S.D TEX 1995)and Sievert v City of Novalle 4 Nat'l Disability Law Rep P82 1992 W.L 500514 (N.D Cal 1992)

AS TO REQUEST FOR FENCE AND RAMP AND DECK

IX The plaintiffs' home is a single -family residence owned by private individual and therefore is exempt and 42 U.S.C & 3604 does not apply

In the matter presently before this court ,the house located at 4065 Jewfish Drive is a single -family residence by a private individual Nicole Loren. There is no evidence of record that Nicole Loren owned more than three single family houses at one time and therefore the house itself is exempt pursuant to 42 U. S. C & 3603 (B) (1)

Plaintiff states HUD regulates any housing issue and funds agents under Fair Housing in each state.

In Pulcinella v Ridley Tp 822 F Supp 204 (ED Pa 1993) a township and its zoning hearing board were held not to have violated 42 U.S.C 3604 (F) by refusing to grant an application for a special exception or variance to construct a wheelchair accessible addition to the first floor of sister's home was a single family residence owned by her as a private individual and since it was not contended that she owned more than three single family houses at one time ,

the paraplegic brother could not have compelled her to allow him to make the modification in question because of the exemption for single family residences contained in 42 U. S .C 3603 (B) (1) Id at 206 .The Court further found that the exemption exempts not only the owner but the house itself and therefore the plaintiff could not compel the township to grant them a variance or permit for modifications .

Similarly the house located at 4065 Jewfish Drive is a single -family residence owned by Charlene Janke Sister Nicole Loren .There is no evidence that Nicole Loren owned more than three single -family houses at one time and therefore this house is exempt .Based upon the reasoning set forth in Pulcinella "Hernando Beach " is entitled to a judgment as a mater of law .

X Plaintiffs seek damages for personal injuries associated with a fall that occurred on October 3,1998 at the home located at 4065 Jewfish Drive there is no alleged claim of negligence and such "Hernando Beach " is entitled to a summary judgment as to those damages

Count I,II,III,IV of plaintiffs Complaint seeks damages for personal injuries to Bette Newbold and Charlene Janke allegedly arising out of a fall in the interior of the home located at 4065 Jewfish Drive on October 03,1998 The complaint makes no allegations of negligence nor is there any evidence of negligence on the part of "Hernando Beach " nor has there been any theory plead in the complaint which would allow an award for medical expenses pain and suffering related to the fall .Section 42 U.S.C &3613 allow for certain damages associated with discriminatory conduct none of which authorizes damages associated with alleged personal injuries.

AS a result "Hernando Beach " is entitled to a summary judgment as a matter of law as to any damages associated with the fall involving Bette Newbold and Charlene Janke

Submitted and filed January 31,2001 by S/B Frank A Miller Esquire,Caglianone & Miller P.A 703 Lamar Ave Brookville Fla 34601 Florida Bar No 910831 Attorney for Sasser& Hernando Beach Inc

App.71

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No 99-CV-2413-T-30 TBM
Filed June 22,2001 Dkt 100

NICOLE LOREN ,BETTIE J NEWBOLD
and CHARLENE JANKE by and through
VERONICA AGUIRRE
Plaintiffs"

vs.

CHARLES M SASSER JR ,
HERNANDO BEACH INC,
HERNANDO BEACH SOUTH
PROPERTY OWNER ASS'N et.al
Defendants"

ORDER ON DEFENDANTS 'MOTION FOR SUMMARY JUDGMENT

This cause for consideration on Defendants Sasser Motion for Summary Judgment and suporting memoranda (Dkt 79,81,82) Plaintiffs responses thereto (Dkt 85,89)Defendant Hernando Beach Inc "s Motion for Summary Judgment and supporting memoranda (Dkt 45,58,83,84) and Plaintiff response (Dkt 52,89) Defendants Hernando Beach South 's Motion for Summary Judgment (Dkt 58) and Plaintiff's Responses thereto (Dkt 69,78) Defendant Hernando Beach South also filed Motion for Leave To Reply To Plaintiffs Opposition to Motion For Summary Judgment (Dkt 91) and Plaintiff have opposed the motion (Dkt 94) The court heard the argument of counsel on November 9,2000 reviewed the motions ,responses supporting and opposing memoranda ,record evidence cited therein and the court file in this matter

FACTUAL and PROCEDURAL BACKGROUND

In February 1997 Plaintiffs bought and moved into a home in a deed restricted community in Hernando Beach ,Florida. The deed restriction prohibited ,interalia

,placement of signs in the yard and restricted improvements such as ramp ,deck or fences. In early 1997 Plaintiff Loren aware of deed restriction moved into the home with her mother (Plaintiff Newbold)who has high blood pressure and suffers from severe arthritis which makes it difficult for her to use stairs ,and her step aunt who is severely mentally handicapped and blind(charlotte Janke).After request to build a ramp /deck and fence in the front yard were denied and Plaintiffs mother and aunt fell at the home .Plaintiff decided to move and wished to place a "For Sale sign in their yard in order to sell their home.

Hernando Beach South (HBS") is a deed restricted community of approximately 425 lots that prohibit displaying signs unless approved by Hernando Beach South Property Owners Association Inc (the" POA")To place a For Sale sign in the yard is a violation of the community 's judicially -enforceable deed restriction which bans homeowners signs. The POA refused to waive enforcement of the sign ban when requested by Plaintiff asserted that

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1 Plaintiffs brought the house in a foreclosure sale for $93,000.

2 Plaintiff Newbold has had several leg surgeries and has two artificial knees

3.Janke is a legal ward of Plaintiff Veronica who brings this suit on her behalf

4The POA is a nonprofit corporation created in April1999 after a vote was taken to dissolve the prior association. The POA (and before that, Hernando Beach Inc hereinafter referred to as ("HBI")exercises over the enforcement of deed restrictions

5.Plaintiff realtors ,became of her knowledge of the community's deed restrictions refused to erect a "For sale "sign without a court permitting one

Defendants POA"s refusal to waive the applicable deed restriction coupled with the threat and risk of judicial action" constituted violation of her First Amendment right of expression and brought this suit for preliminary injunction and damages pursuant to 42 U.S.C &1983 Earlier in this case HBS denial of Plaintiff's request to place a For Sale "sign in her yard was the subject for preliminary injunction enjoining the POA from enforcing the sign restriction. The injunction was enter without a response from the POA .However after POA filed a response the court then denied Plaintiffs' Amend Motion for Preliminary Injunction finding that the Plaintiffs did not meet their burden in establishing substantial likelihood that they would prevail on the merits. The court stated that "[p]ersuasive authority suggest that the mere possibility of judicially enforceable private covenants does not satisfy the state action' requirement of the Fourteenth Amendment. The court reasoned that 'the likelihood that Plaintiff could persuade the court to classify a party 's refusal to waive litigation as state action is high questionable...[Even if there were a determination that state action existed,]Plaintiff have not met the burden of persuasion as to the likelihood of success on the merit because the deed restriction does not completely ban commercial speech ,instead sign may be displayed after approval by the [POA]"

In the interim between the courts granting the preliminary injunction and then denying it (March 14 through April 11,2000), Plaintiff placed the realtor's 'For Sale "sign in her yard .The realtors removed it after the second court order denying the injunction ,but Plaintiff replaced it with a generic "for sale "sign with Plaintiff's phone number on it. Thereafter on or about July 07,2000 she was successful in selling her house and Plaintiffs relocated to Chicago area [6]

[6]Plaintiff sold the house for $140,000

Plaintiff have also filed suit to challenge other deed restriction under federal and state fair housing statues in relation to their request to build a ramp /deck and a fence on their property specifically paragraph one of deed restriction states:

Improvement No building ,addition ,accessory ,fence.. shall be commenced ,erected ,placed or maintained upon any lot.. until complete written plans and specifications showing the nature ,kind ,size (including the size and square footage of each separate room or area, driveway layout ,shape ,color height ,floor plan material ,location and approximate cost of same been submitted and approved

Plaintiffs initially made several verbal request to place a fence in the front yard. Defendants denied these request. Plaintiff followed these request with a written request dated July 29,1998 in which Loren wrote :"[t]he fence will be used for visual privacy and noise reduction ,our right to aesthetic decoration ,security and serve as a marked boundary of private property, especially for insurance liability reason and for providing a safety enclosure for domesticated animals It is our intent to establish security protection and privacy of two handicapped person living in our dwelling .Defendants Sasser on HBI "S behalf denied her request in writing in writing on or about July 30,1998 and remained Plaintiffs of the deed restrictions she agreed to upon the purchase of their home.

Defendants Sasser further informed Plaintiffs that the only fences permitted in the community were in the rear and side of lot .AS plaintiffs home was located on a corner lot ,he further wrote that a fence may inhibit the sight distance of driver at that intersection.

7.an oral request to build a ramp /deck is not proper procedure under paragraph one of the deed restriction which requires the submission of written plans and

specifications

8. Although Plaintiff explained the height and placement of fence on the fence on her property ,she did not include drawing of the proposed fence{chain link}

9. Plaintiff had already built an approved fenced in dog run on the side of their home

On August 4,1998 Plaintiff Loren responded to defendant Sasser in his capacity as president ,denying that their proposed fence would be a distraction or cause traffic problems .In this letter Plaintiff further explained that Plaintiff Janke is blind and mentally retarded and that fence was needed so she could "receive full enjoyment of the premises and not wander off the property into traffic ' She concluded the letter ,I hope you can see fit to accommodate [Janke 's} handicap .I feel it is important for her to be able to fully enjoy the premises" On August 14,1998 Defendant Sasser responded denying Plaintiff's request for the same reasons

On or about Sept11,1998 Plaintiff made another written request for the fence and also requested a free standing multi -purpose deck with side ramp ' to be built in the front yard .Sasser denied the request ,on behalf of the association and informed Plaintiffs that the drawing accompanying request was inadequate to determine if the deed restriction were violated.

Approximately one month later Plaintiff made a revised request for a ramp /deck and submitted in depth and professional drawing. The POA denied Plaintiff second request and in the denial letter suggested that for safety reasons of a handicapped individual the ramp and deck should be built in the garage .In addition ,defendant Sasser asserted ,on behalf of HBI that because the ramp /deck was intended for the front ,it was a detraction " from the community and did not conform with other approved decks in the community which are built on the back of house. 10 Initially Plaintiff also received a

deficiencies report from the building department relating to deck .After Plaintiff decide to move, Plaintiffs did receive a building permit after correcting apparent deficiencies to the drawing .This permit was never submitted to POA. Plaintiff now claim the resubmission would have been futile .
Shortly thereafter, Plaintiff filed an administrative discrimination complaint .On October 19,1999 Plaintiffs filed this federal lawsuit seeking damages pursuant to federal Fair Housing Act 42 U.Sc & 3604 (f) (3) and the Florida Fair Housing Act Fla Stat &760.20 et s eq for refusing to permit "reasonable modification s or accommodations" when defendants denied Plaintiffs' request to construct a fence a ramp /deck and under 42 U.S .C &1983 from damages arising from Defendant's failure to waive the deed restrictions prohibiting Plaintiffs from placing a "For Sale sign in their yard .Plaintiff claim that the denial of their request for improvement was unlawful discrimination on the basic of their handicap and that they were denied the" full enjoyment "or equal use of their home .Plaintiff filed suit against HBI ,the POA and Defendant Charles M Sasser Jr who is president of HBI .All right to modify ,amend and enforce the deed restriction were transferred from HBI to the POA on April 03,1999 through an Assignment of Developer's Right under Restriction Agreement

All Defendants have filed motion for summary judgment .Specically HBI and the POA have moved for summary judgment on the sign counts on the grounds their conduct does not constitute "state action" .On the other fair Housing claims Defendants argue that the request for modifications/accommodation were denied for legitimate reasons and without discriminatory intent Defendants Sasser argues that he is not personally liable for actions taken in his official capacity as officer of HBI .

Legal Arguments

Summary Judgment Standard

Federal Rule of Civil procedure 56 require summary judgment if the pleading s ,depositions and affidavits show that there is no genuine issue of material facts and the moving party is entitled to judgment as a master of law. Celotex corp v Catrett 477 U.S 317 (1986) .The movant can meet this initial burden by presenting evidence showing there is no dispute of material fact, or by showing the nonmoving party has failed to present evidence in support of some element of the case on which he or she bears the ultimate burden of proof. I d.The evidence must be viewed in the light most favorable to the non -moving party .See Masushita Electric Industrial Co .Ltd v Zenith Radio Corp 475 U.S 574,586 (1986) Anderson v Liberty Lobby Inc 477 U.S 242,255 (1986) Augusta Iron & Steel Work Inc v Employers of Wausau 835 F2nd 855 ,856 911th Cir 1988)

Once the moving party has met his or her burden Rule 56 requires the non moving party to go beyound the pleadings and by affidavit (s) (s) or by the depositions ,answers to interrogatories , and admission on file 'designate 'specific facts showing that there is a genuine ,issue for trial Celotex 477 u.S at 324. Nevertheless credibility determinations ,the weighting of evidence and the drawing of inferences from the facts are the function of the jury and therefore the evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in the non-movants's favor. Anderson 477 U.S at 248.This court may not decide a genuine factual dispute at the summary judgment stage Fernanandez v Banker National Ins Co 906 F 2nd 559 ,564(11th Cir 1990)

Requirement of "State Action "for 1983 Action

Defendants argue that the &1983 action (for the sign counts) is not applicable to Defendants' conduct because

they are not "state actors".42 U.S.C & 1983 requires conduct taken "under the color of state law' or state action' See Brentwood Academy v Tennessee Secondary School Athletic Ass'n 121 S.C. T 924 ,930 (2001) state action may be found "only if there is such a close nexus between the State and challenged action" that seemingly private behavior may be fairly treated as that of the State itself") Thus ,in the context of private organizations ,certain actions may be properly characterized as constituting state action when a host of factors are reviewed such as: is there a "sufficiently close nexus between the challenged activity and the state that is so intertwined, that the activity may be fairly attributed to that of the stats," has the state exercised "coercive power" has the state provided "significant encouragement "or is the entity controlled by an agency of the State Id see also Jackson v Metropolitan Co 419 U.S 345 (1974) This determination is a "necessarily fact bound inquiry 'Id .

Although there has been additional evidence developed since the Court's prior preliminary injunction ruling ,the Court is not persuaded by Plaintiff's latest analysis of the state action requirement Defendants motion for summary judgment on Plaintiff &1983 claim on the sign count are hereby granted for failure to establish the necessary "state action " See Sofarelli v Pinellas County 931 F2d 718 ,723(11th Cir 1991) (behavior of private individual dies not rise to the level of "state action")

Liability under Fair Housing act

The court is satisfied that the Defendants are subject to liability under the Federal and state fair housing acts for Plaintiffs Claims that they failed to reasonably accommodate Plaintiff's request in Violation of 42 USC & 3604 and & 760 .20 Fla Stat . The court does not agree with Defendant Sasser that he can not be individually liable for action s or conduct taken in his official capacity as

president of the POA. See e.g City of Chicago v Matchmaker Real Estate Sales Ctr 982 F2nd 1086 (7th cir 1992) Plaintiff argue that (1) HBS is effectively a company town exercising government power with a symbiotic and intertwined (sic) relationship with local and state government '-enforced custom of allowing sign restriction in deed restricted communities provided compulsion for [the POA] to preclude Plaintiffs from exercising their First Amendment rights' Plaintiff also argue that the court is not precluded from reconsidering the issue under the law of the case" doctrine after preliminary injunction ruling defendants also argue they are exempt from Fair Housing Act on account of the single -family home "exemption contained in 42 USC &3603 (b) (1).This exemption reads in pertinent part "[n]othing in section 3604 .....shall apply to -(1) any single family home sold or rented by owner: Provided, That such private individual owner does not own more than three such single family homes at one time .....Defendants argue that there is no evidence that Plaintiff Loren owned more than three single family homes at the time she owned residence at issue and is therefore exempt according to &3603(b) (1)Plaintiff argue that because the alleged discrimination is neither in the sale nor the rental of a single family home the exemption has no application Court generally construe exemptions to the Fair housing Act narrowly to insure the remedial purpose of the statue. City of Emonds v Oxford House Inc 514 U,S 725 ,732 (1995) exception to "general policy is sensibly read narrowly "preserve the primary operation of the policy)see also Hogar Y Vida En EL Desierto Inc v Suarez 36 F3d 177 (1st Cir 1994) .Accordingly it is Defendant's burden to establish their entitlement to the statutory exception .See Massaro v Mainland Section 1 &2 Civic Assoc Inc 3 F3d 1472 (11th Cir 1993) The court fins that Defendants did not carry this burden and are not entitled to be exempted from the statue.

Reasonable Accommodation Claim

The Fence Count

Defendant HBI claims it is entitled to judgment as to judgment as matter of law on the fence claim (counts 3 and 4) because Plaintiffs failed to submit complete written plans for approval ,a condition precedent set forth in the deed restriction .Even if the court that the plaintiffs written request for a fence satisfied the deed restriction 's condition precedent Defendant HBI urges the denial of plaintiff's request for a chain link fence in the front yard was not unreasonable and did not violate the federal fair housing against handicapped persons

The pertinent part of the federal Fair Housing Act, 42 U.S.C &3604 (f) (3) and Florida's Fair Housing Act & 760.23 (9) Fla .Stat), defines discrimination to include:
(a) A refusal to permit ,at the expense of the handicapped person reasonable modification s of existing premise occupied by such person if such modifications may be necessary to afford such person full enjoyment of premises ; or (B0 a refusal to make reasonable accommodation s may be necessary to afford such person equal opportunity to use and enjoy a dwelling.....
The FHA concept of reasonable accommodation requires of interest of benefit to the handicapped individual against the interest and burden of the party requested to make the accommodation. See Robinson v City of Friendswood 890 F Supp.616 (S.D TX 1995) see also Marathon v Maple Grove Condominium Assoc 101 F2d,1041 (N.D Ill 2001) recognizing that a Reasonable accommodation determination belong to the jury to consider all evidence for a cost -benefit balancing that takes both parties 'needs into account") whether a requested accommodation is reasonable as required by law is "highly fact specific ,requiring case -by case

determination. Groner v Golden Gate Apartment 2001 W.L 557980 * 4 (6th cir may 25,2001)Such a determination is a mixed question of fact and law and generally requires a showing that the desired accommodation will affirmatively enhance a disabled plaintiff quality of life by ameliorating the effect of the disability' Howard v City of Beavercreek 18 F 2d 866 ,872 -73 (S.D Ohio 2000)

Under the FHA ,handicapped is defined as having a'(1) physical or mental impairment which substantially limit one or more of such person major life activities,(2) a record of having such impairment or (3) being regard as having such impairment.42 USC 3602 (h) .For the purpose of this motion ,the court views Plaintiff Newbold and Janke as Handicapped .Plaintiff Loren also has standing to sue under FHA.See San Pedro Hotel Co inc v City of Los Angeles 159 F3d 470,475 (9th Cir 1998) claims brought under the act are to be judged under a 'very liberal standing requirement "a plaintiff need not allege that he or she was a victim of discrimination but only that as a result of the defendants discriminatory conduct he or she has suffered a distinct and palpable injury.

In the Plaintiff written request to build a fence in her yard ,she mentions the security ,protection and privacy of two handicapped person living in our dwelling as the last item in along litany of reason for the fence that begins with visual privacy and noise reduction ," Plaintiffs rights to aesthetic decoration and even providing safety enclosure for domesticated animals .Plaintiff argue the fence is necessary to afford Newbold the equal opportunity to use and enjoy her dwelling and allow **plaintiff Janke to enjoy the outdoors with her seeing eye dog** without fear that she would wander off ,the dog run away or other people would enter the yard .Viewing the the evidence in the light most favorable to the Plaintiffs ,the court finds that the record support granting summary judgment in favor of the defendants on the fence counts

because Plaintiff have not establish that that this **accommodation ,even if reasonable ,was denied with discriminatory intent** or necessary to afford Plaintiffs 'equal opportunity to use and enjoy "their dwelling .The restrictions permitted fenced -back or side yards. There is no evidence that other owners were permitted to build fences in the front **other like Plaintiffs ,had fenced in side or back yards**.{other are able -bodied}plaintiffhandicapped The only evidence asserted by Plaintiff of discrimination **with regard to fence count is that requests by other owners for improvement were not rejected for reasons of inadequate plans** .The court does not find this evidence is sufficient to establish discriminatory intent on these counts .In making this ruling ,the court construes Plaintiff Loren letter 's letters to Defendant Sasser requesting to build the fence as sufficient to comply with deed restriction. .Accordingly Defendants ' motions for summary judgment on these counts are granted

The Ramp /Deck Counts

Unlike Plaintiff's request for a fence ,Plaintiffs request to build a ramp /deck focused solely on the necessity of the accommodation for plaintiffs' handicaps .Plaintiffs argue that the ramp /deck would afford plaintiffs an equal opportunity to use and enjoy their dwelling and constitutes a reasonable modification and accommodation of the existing deed restriction on improvement to property. Plaintiff's further claim that Defendants refused their request to build a ramp /deck and asked for additional drawing, they were denying their right to a reasonable accommodation with the unlawful intent of discriminating against the plaintiff due to their handicaps It is undisputed that neither Plaintiff Newbold nor Janke needed or used a wheelchair when they moved into the home. Plaintiff Newbold however ,did have difficulty with stairs due to arthritic condition .Sometime thereafter however Plaintiffs began to use a wheelchair to facilitate

the care of Janke. It appears that Plaintiffs request for the ramp /deck is one that a jury could find reasonable one that would 'affirmatively enhance "the plaintiffs 'quality of life by "ameliorating the effects "of their handicaps. Although there is no dispute that the deed restriction do not prohibit the building of ramp and decks. Plaintiff have put forth evidence from which a fact finder could determine that the Defendants' denial of plaintiffs request to build a ramp /deck was discriminatory. An affidavit attest that a neighbor view was saved by defendants disallowing the ramp .See Howard v City of Beavercreek 18 F Supp 2d 866 ,872-73 (S.D .Ohio 2000)(concerns for aesthetics and property values are not viable reasons" for potentially violating a handicap individual's rights under the FHA ,Also Plaintiff Loren attest the other homes in the community have decks or covered porches attached to the front of their homes .Moreover ,Plaintiffs moved from their home shortly after their request to build a ramp /deck was denied ,which may be considered additional evidence that the requested accommodation was necessary to Plaintiffs' full enjoyment of the property. On light of the record evidence the factual determination of the reasonableness of conduct is one reserved for the jury

Accordingly it is hereby ordered and adjudged that defendants motion for Summary are granted in part and denied in part as set forth herein. Defendant Hernando Beach South Motion For Leave To File Reply To Plaintiff 's Opposition To Motion For Summary Judgment (Dkt 91)is hereby denied

Done and Ordered in Tampa Florida on June 21,2001

S/B James S Moody Jr
United States District Judge

App 84
United States District Court
Middle District Of Florida
Tampa Division
Case No 99-2413-Civ -T-30 TBM
Filed July 31,2001

NICOLE LOREN ,BETTIE J NEWBOLD
CHARLENE JANKE and by and through
VERONICA AGUIRRE
Plaintiffs'

vs

CHARLES M SASSER JR
HERNANDO BEACH INC
HERNANDO BEACH SOUTH PROPERTY
OWNERS ASS'N et.al
Defendants"

ORDER DENYING PLAINTIFFS MOTION FOR RECONSIDERATION

This cause came for consideration on Plaintiff's Motion (In Part) of the Court's Summary Order Of June 21,2001 and Supporting Memorandum (Dkt 101) The Court heard the arguments of counsel on this matter at Pretrial Conference July 13,2001 after Plaintiffs A Note Of Filing and Request For Judicial Notice (of Hernando County 's Fencing Ordinance) In Further Support Of Their Motion For Reconsideration (In Part) Dkt 104) Plaintiff request that the court reconsider its ruling granting summary judgment to Defendants on Plaintiffs claim that Defendants denial of Plaintiffs request to fence their front yard was discriminatory under federal housing law.
The Court has carefully considered Plaintiffs' motion and remain unconvinced that summary Judgment is not

warranted on this claim. Despite Plaintiffs argument otherwise, the court is troubled the facts in the record establishing that Plaintiffs request to fence their front yard stress their need for privacy and protection ." To extent that these needs pertain to Plaintiffs claims of disability discrimination they may be equally addressed by a back yard fence ,as put up by other members [able -bodied}of the community and suggest by defendants .The record reveal Plaintiff other reason for requesting a front yard fence including visual privacy ,noise reduction and aesthetic decoration "These reason do not appear to directly relate to plaintiff handicaps. The court does not find further support in the record for Plaintiff 's contention that Defendants conduct as it pertain to the fence claim is discriminatory.

Plaintiff counsel directs the courts the court to Plaintiff 's affidavit in which she attests that a fence was needed to help Plaintiff Janke enjoy the outdoor with her GUIDE DOG FOR THE BLIND AND A PERSON WITH MENTAL DISABILITIES ACCOMMODATION opposed to being cooped up in a house 'because it would give her the ability to move about and interact with her dog and avoid the boredom and restlessness of having to sit or be confined to a space on the porch .without worrying about her wandering away or into traffic or about the dog running off or people coming into the yard (which would lead to their being bitten if approached Janke) Plaintiff attest that the space in the back yard is 'narrower that the front yard and the front yard is the largest and nicest portion of [the lot to fence. Plaintiff Loren continues in defense of her request for a front yard fence to point out the slope in the back yard 'seen to give my mother more problems than the slope in the front yard as she would try to balance herself against the short back stairs whenever she fed the wild birds.

The court does not find this colloquy support plaintiff assertion that defendants denial of their to fence was discriminatory. In fact much if not most of plaintiffs needs can be accomplished by fencing the back yard as suggested by defendants and done by others in the community. This appears to be very definition of reasonable accommodation .

In her affidavit Plaintiff Loren falls short of stating that due to the slope of the back yard it could not be fenced to achieve her mother's and aunts needing of enjoying the outdoors" Plaintiff further attest to the fact that they were warned of alligator in the canal bordering their back yard and convict laborers were sometimes used to clean canal Again putting up a fence around the back yard (even with the four feet ,25 percent open needed for the waterway and required by Hernando County fence ordinance would still achieve plaintiffs need to enjoy the outdoor .Wind zone require chain link fence per old association and county.

Plaintiff also attest that they had wanted to use the remove metal porch and use the ten feet to install (eventually a swimming pool when it could be afforded .This request is simply too speculative for the court to premise a decision that the denial of plaintiffs request to fence front yard was discriminatory.

Hence the court remain convinced at the summary judgment stage that Defendants denial of plaintiff request to fence their front yard fence does not present a material issue of fact as to whether or how ,Defendants failed to reasonably accommodate Plaintiff request .Plaintiff have only offered evidence that it was preferable to fence the front yard instead of back yard, not that it was unreasonable .See Groner v Golden Gate Garden Apartments 250 F3rd 1039,1047 (6th Cir 2001)Plaintiff 's preference is not evidence that Defendants participated in unlawful discrimination. **The court does not mean to**

imply that Defendants suggestion to fence the back yard is a reasonable accommodation 'per se. The Court makes this determination on the records before it at the time and finds no reason proffered by Plaintiffs would put Defendants on notice that denial of Plaintiffs request to fence their front yard was premised on unlawful disability discrimination. According Plaintiff Motion For Reconsideration(IN PART) of the Court Summary Judgment Order of June 21,2001 DKT 101 is denied

S/B James Moody Jr
United States District Judge

APP 88

PLAINTIFF STATEMENT

It is clear that no consideration was given to mental disabilities or weren't applied to this case and the relationship for a dog for blind person and support dog for a person with mental disabilities that is a special handicap accommodation that has the same legal right as the handicap person. The court has focus only on physical disabilities The district court stated developmental person doesn't matter this is a fair housing case but it does matter to whether they can use a deed restrictions or a community board approval group it has a impact on the outcome of the case. Whether a developers' deed restriction are enforceable, or sole discretion ,no rules or handicap policies. It is clear only the caretaker of a person with mental disabilities is the only person that know what is needed and location for daily function and a better understanding why there must not be third party involvement<u>USC6000-01 caretaker have sole judgment</u> on home modification This isn't your average handicap person it must be a highly profession to understand her needs and her ability to cope with her surrounding to make a judgment on this case. What is logic and simple for the able bodied person can be a outright panic for a person with mental disabilities requiring a small ,quiet secure corner area that is why the expert witness was important in court. **The facts you have a blind person leaving through the front entrance door where handicap accommodation should have been with a dog for the blind and a support dog for a person with mental disabilities the court is unable to understand but refer to dog for the blind in court order.** Fla Stat 760.23 section 8,9s terms and condition between the care and function of a caretaker of a person with mental disabilities as stated in the manual of The Right of Person With Mental Disabilities. Most communities just ask for a physician report notify community only that is a handicapped

hardship. ADA only housing provider can be informed about medical information. The rear of the property a **busy boating waterway** not a back yard three steps and a angle slope, no exist to street Plaintiff has a long list of common sense reason why the location wasn't suitable not scenic or appellants preference ,but safety See Sasser disposition unfounded suggestion. The community Handbook manual states safety what does that mean? Handicapped do not have to accept undue hardship a wrap around deck leading from the rear etc .See Dutcher report the best location for handicapped accommodation wheelchair bound himself and expert history involvement and spokesperson for the disabled not allowed to speak in court on Janke behalf. Janke doesn't go on porch with small metal door major construction remove sliding glass doors and tracks, high cement threshold that must be cut and angle ADA calls it undue hardship cost factor that the defendants are claiming to be the housing provider citing apartment and public housing cases when the case issue plaintiff are the housing provider and on private property what interest needs to be balance. What can not be understood if one of the needed handicap accommodation is not available that means the family would have to move from the community in our case none were made available. Why would the plaintiff waste so much time if the accommodation were not needed. The side of our home is a bathroom with no exist door and windows by the ceiling, Full enjoyment would mean the entire property fence as given to a blind child by the Hernando County on a variance to a zoning law. County and old association required chain link dog run due to wind zone Plaintiff written request did everything cost height ,drawing of placement the only thing we did not do was draw picture of a chain link fence. All they had to do is look out the window of model across the street bushes outline the location of fence a small section of the front of

property,. Sasser could have walked across the street anytime and ask for further information. There is no question in the legal file of other homeowners one page request . During discovery defendant release a few written request of other homeowners with no copy of permit attached, claiming that was all request that were available. Caretakers with a person with mental disabilities want a corner to distance themselves from neighbor to avoid any problems. It was very difficult in this community with a captain on each street ,gossip and community involvement the one thing they were to do with association fee was to maintain the common area which they failed to do services billed on yearly budget not performed as stated in plaintiff letter to association . Nothing more than a hostile environment claiming to be able to place lien on our home that was for sale. Just before plaintiff moved into the community there was a fight with a family with children that wanted a fence in the community that created the placement of fences. The question to whom written request should be forward there is a profit corporation open to the public inside the community **without handicap accommodation** handling non profit corporation issues with a pending lawsuit with **old association attorney** stating Sasser had no right to dissolve association at whim transaction of transfer in legal dispute ; no right to deny handicap accommodation or send letters .Developer claiming to be agent of property owner. According to Florida Homeowner Chapter a single member is not allowed to act on behalf of the association , commercial lot and lots used for construction purpose for resale are not covered under statue. The new association was formed with lawsuit still pending . In plaintiff certified letter to association before filing federal complaint they avoid denial of accommodation and personal injury responding only that they were unable to change deed restriction .

New Association the same people claim to not aware issues in the case until they received the federal complaint but plaintiff certified letter in legal file. A profit corporation dealing in real estate with **fair housing logo** on interstate real estate book, handling local government function of building and zoning .Sassers' letters are his views and opinions who did he contact with legal case pending ? Plaintiff had permit approved and paid for on all subjects in this case but defendant's never asked for permit. Often stated Plaintiff was aware of deed restriction it's hard for the association board member some real estate agents to understand that hardly a real estate agent showing a home would state this community doesn't allow handicap they are deed restricted. County inspector report no worked performed on permits. Frankly the plaintiff doesn't know how the President Of The United States is going to overcome these problems with his handicap home buying program or home base employment program. What would this community do if someone had a sudden stroke.?

App 92

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case no 99-2413-CIV-T-30 TBM
Filed DEC 17, 2001
NICOLE LOREN ,BETTIE J NEWBOLD
CHARLENE JANKE by and through
VERONICA AGUIRRE
Plaintiff's
CHARLES M SASSER JR
HERNANDO BEACH INC
HERNANDO Bch SOUTH PROPERTYOWNERS ASSN

ORDER

This cause came on the consideration upon Defendants Hernando Beach INC and Charles M Sasser Jr Motion for Summary Judgment as to any claim for damages associated with alleged personal injuries with supporting memorandum of law (Dkt 129,130) and Plaintiff's response thereto. As for summary judgment they were not timely filed however the court consider the issue therein as constituting a motion in limine to exclude testimony regarding Plaintiffs' personal injury damages and Plaintiffs were instructed to so respond (Dkt 131) .The court notes that the details of Plaintiffs fall and some of the injuries sustained were extensively pled in the complaint. Upon consideration of the motions, response and the court file in this matter declines to exclude such testimony for reason set forth herein.

Factual and Procedural Background

The community where Plaintiff resided is a deed restricted one. Any improvement such as ramp or deck require the submission of complete written plans '
Specifically ,paragraph one of deed restriction reads follows; Improvements :No building ,addition ,accessory ,

fence ....or other structure or improvement shall be commenced, erected place or maintained upon any lot nor shall any exterior addition to or change or alternation be made until complete written plans and specifications showing the nature ,kind ,size (including the size and square footage of each room or area)driveway layout ,shape ,color ,height ,floor plans materials ,location and approximate cost of same have been submitted and approved in writing by [defendants]

Plaintiff submitted their first request for a ramp / deck on September 11,1998 with a one page drawing SEE Dkt 73 .Exhibit 4 Defendants denied their request by letter dated September 16,1998 or failure to provide adequate drawing (request #1) SEE DKT Exh 5

After receiving this letter denying their request two significant events occurred first Plaintiff retained Walton C Dutcher JR ("Dutcher") to complete more extensive written drawings of the proposed ramp / deck for developer .Dutcher submitted ,mailed plans to Plaintiffs on October 02,1998 and thereafter Plaintiffs submitted them to Defendants with a letter dated October 07,1998

The second significant event occurred on October 03,1998.Plaintiff Newbold and Janke while existing the house through the garage ,fell down the steps incurring personal injury and aggravating other mental and physical conditions.

This is a brief review of the facts as they relate to Fair Housing Act that remains for trial and whether Plaintiff can recover damages for personal injury thereunder. The court incorporates the facts and factual background set forth in it earlier summary judgment order and order denying reconsideration thereof See DKt 100,116,123, Defendants also denied this request (request #2) as more fully discussed in the Courts previous order denying Defendants motion for summary judgment on this claim.

It appears to be undisputed from the record that Dutcher

were more fully developed and complete than the one page drawing accompanying plaintiffs first request. Although these drawings were subsequently denied by Defendants for a number of reason and were altered somewhat before obtaining a building permit from County ,it also appears undisputed in the record that Dutcher's plans could not have been implemented before Plaintiffs fall .Defendants contend that this fact precludes Plaintiffs from recovering personal injury from the their fall. Dutcher points out in his reports(Dkt 90 Exhibit E) that the drawing accompanying the first request was not to scale drawing by a contractor He further opines that these rough plans should have been sufficient for assessing whether the project present potential deed restriction problems'

Please note Plaintiff Loren states: Dutcher after calling building and zoning called model Hernando Beach Inc. asking for the latest copy of deed restriction to be mailed to him ,and asking for any other requirement Loren had to provide, Deed restriction were never mailed by model. When Loren was contacted by Dutcher she sent deed restriction she received in resident manual received sixty after moving into the community.

ANALYSIS

The questions thus present by Defendants motion are whether the first denial of Plaintiffs request to build the ramp /deck could be considered discriminatory or violative of the Fair Housing Act 42 U.S.C &3604 (F) (3) if it was whether that denial caused Plaintiffs fall: and whether such damages are recoverable. The court answers the later question in the affirmative finding that Plaintiff is entitled to seek actual damages under 42 U.S.C. &3613 (c) (1) see Justice v Pendleton Place Apartment 40 F #d 139 (6th Cir 1994) See Also Franklin v Gwinnett County Public School 503 U.S 60 (1992) Moreover the court's previous

Order Denied Defendants motion for summary Judgment on Plaintiff 's claim that Defendants denial of their requests to build a ramp / Deck violated the Fair Housing Act .This ruling however was clearly based on both of Defendants denial to plaintiffs request -not just the first denial . At that stage in the case there was no need to delineate which denial (of Request #1 or Request #2) raised the specter of discrimination under the Fair Housing Act Defendants in filing their motion in limine to exclude Plaintiff's personal injury damages now ask the court to make such delineation. In response ,the Court finds as it did in its earlier summary judgment order that the question as to whether Defendants denied a request for reasonable accommodation or modification in violation of &3604 when they denied the first request to build a ramp / deck is a factual issue more appropriately determined at the close of evidence or if it survives by jury done and order in Tampa Florida on this 14 th day of December 2001 s/b James S Moody Jr U. S District Judge. Please Note: Loren Statement The defendants denial letters have several reason as this court stated one being community rule **unable to change deed restriction ,second reason must be in rear and this is well stated in summary judgment it stand to reason front drawing and blueprints seen somewhat moot if defendants denied placement in the front of property**. Sasser ask for blueprint to tell them which deed restriction we violated and cited deed restriction numbers. **Sasser** asked for **blueprint could not understand approved crude drawing** that county approved. Later after Loren disposition and they received copy of county card asking for more information Sasser cancelled disposition the last taken after all other parties now **Sasser claim he couldn't understand county approved blueprints but didn't contact anybody**

App96

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
Case No8:99 cv-2413-t-30 TBM

FILED January 31,2002

NICOLE LOREN BETTIE J NEWBOLD
and CHARLENE JANKE by and through
VERONICA AGUIRRE
vs
CHARLES M SASSER JR,
HERNANDO BEACH INC
HERNANDO BCH SOUTH PROPERTY OWNERS ASS

JUDGMENT IN A CIVIL CASE

x JURY VERDICT This action came before the court for trial by jury. The issues have been tried and jury rendered its verdict

x DECISION BY COURT This action came to trial or hearing before the court. The issue have been tried or heard and a decision has been rendered

IT IS ORDERED AND ADJUDGED that upon the jury's verdict ,judgment is entered in favor of Defendants Charles M Sasser Jr and Hernando Bch INC. and against Plaintiffs Nicole Loren ,Bettie Newbold and Charlene Janke by and through Veronica Aguirre

IT IS FURTHER ORDERED AND ADJUDGED that upon the court's decision granting an oral motion for judgment of matter of law. Defendant Hernando Beach South Property Owners Association INC is dismissed from the case. Judgment is enter in the favor of Defendant Hernando Beach South Property Owners Association and against Plaintiff Nicole Loren ,Bettie Newbold and Charlene Janke by and through Veronica Aguirre

January 31,2002 S/B Sheryl L LOESCH CLERK

Bettie J Newbold never returned to court room after judge granted motion to deny personal injury{ Janke}

App. 97

IN THE UNITED STATES COURT OF APPEAL
FOR THE ELEVENTH CIRCUIT

NO .02-11090
NON -ARGUMENT CALENDAR

DC DOCKET NO 99-02413-CV-T-30

FILED OCT17 ,2002

NICOLE LOREN ,BETTIE J NEWBOLD
CHARLENE JANKE by and through
VERONICA AGUIRRE PLAINTIFFS -APPELLANTS

versus

CHARLES M SASSER JR
HERNANDO BEACH INC, a Profit Fla.Corp
HERNANDO BEACH SOUTH PROPERTY
OWNERS ASSOCIATION INC a Non-Profit Fla.Corp
DEFENDANTS'-APPELLEES

Appeal From The United States District Court For Middle District Of Florida

Before Birch ,Carnes, and Hull Circuit Judges

PER CURIAM

This appeal presents the issue of whether a deed restricted subdivision must accommodate handicapped individual under federal and state fair housing statues beyond allowances in the property owners 's regulations as well as constitutional challenges under 42 U.S.C& 1983 The district court granted partial summary judgment to the corporate developer and property owners 'association on allegation of discrimination in violation of federal and state fair housing statues and appellants 'First and Fourteenth Amendment rights relating to placement of a chain -link fence and 'For Sale" sign in their front yard

A jury determined that there was no discriminatory intent involved in the denial of appellants' application for a deck and wheelchair ramp to be constructed on the front of their home, which also is challenged for sufficiency of evidence. We affirm.

I BACKGROUND

In 1997 ,plaintiff -appellant ,Nicole Loren jointly bought and moved into a home located at 4065 Jewfish Drive in Hernando Beach South , a deed -restricted subdivision consisting of approximately 425 lots in Hernando Beach ,Florida Loren resided in the house with her handicapped mother ,plaintiff -appellant Bettie J Newbold who suffers from chronic osteoarthritis,high blood pressure and has two artificial knee that cause her difficulty in using stairs. Newbold osteoarthritis particularly has affected her legs which has resulted in numerous reconstructive surgeries, Additionally she sustained further injuries in an automobile accident in 1987 and plaintiff -appellant Charlene Janke her step aunt ,who is severely mentally retarded ,blind and has a guide dog. Prior to purchasing the house ,Loren was given a copy of the deed restriction for Hernando Beach South ,Specially the deed restrictions provide as to improvement to the house land lot:

IMPROVEMENT No building ,addition , ,accessory, fences, television antenna or signal receiver ,landscaping or other structure pr improvement shall be commenced ,erected, placed or maintained upon any lot ,nor shall any exterior addition to or change or alteration be made until complete written plans and specifications showing the nature ,kind ,size (including the size and square footage of each separate room or area)driveway layout shape, color height ,floor plan, material, location and approximate cost of same have been submitted and approved in writing R!-Attached A at 1 emphasis added

After moving into the house ,appellants requested

permission to construct a four foot, chain link fence in the in portion of front yard conceal by bushes. The purposes for requesting the fence were 'allowing Janke to be allowing to begin adjusting to her outdoor surrounding and feel secure and safe outdoor to **enjoy the sun** and fresh air, to have her dog nearby without fear that the dog would run off or bite someone approaching the property and affording Newbold and Loren a respite from continuous supervision without fear of Janke wandering off'R1-1-9 [

Defendant-appellee Hernando Beach Inc the corporate developer of Hernando Beach South through it president - appellee Charles M Sasser Jr denied the request and advised Loren that fences are not permitted on the front of homes but can be constructed on the side or back of home consistent with the deed restriction and approvals accorded other property owners in the subdivision .Because appellants' residence was a corner lot ,Sasser further informed that such a fence might visibility of drivers at that intersection and, consequently ,be a safety hazard.

Loren subsequently requested permission to construct a deck and wheelchair ramp on the front of the house. Appellee initially denied the request for a deck and wheelchair ramp because Loren failed to provide an adequate drawing .After submitting a more detailed drawing ,appellees denied Loren"s second request for a deck and wheelchair ramp because of safety concern for Newbold and Janke. Sasser suggested that for the safety of handicapped individuals ,the {**deck**} and ramp should be **built in the garage** ,which would be the safest and most appropriate place for a ramp .**See Dutcher detail report to**

dispute issue. Because the deck and wheelchair ramp were intended for the front of the house Sasser informed Loren that the proposed deck and wheelchair ramp did not conform with other approved deck in the subdivision ,which were on the back of houses .Shortly after making the requests for the fence and the deck and ramp ,Newbold and Janke fell down the stairs leading to the garage and sustained various injuries.

The denials of Loren requests ,combined with Newbold And Janke's fall. Prompted Loren to decide to move from the subdivision. The deed restriction in Hernando Beach South prohibit homeowners for from displaying any signs or advertisement " on the property unless specifically approved R1 -Attach A-2

Please Note Plaintiff Loren states the first require for a simple small wooden deck and ramp could have be completed over a weekend .Hardly Plaintiff can move from community with serious medical condition needing medical care as well as year with the commission.

Loren requested permission to put "For Sale "sale on the property to expedite sale of house, which Defendants - appellee Hernando Beach South Property Owners Association ,Inc ("HBSPOA " denied. Loren sough a preliminary injunction enjoining HBSPOA from enforcing the sign restriction which was denied by the district court. Nevertheless, Loren placed a generic "for Sale ' sign in the yard ,sold the house ,and relocated to Chicago,Illinois.*8

Loren ,Newbold and Janke who originally were represented by counsel, filed a six count complaint against Sasser, Hernando Beach INC, and HBSPOA. Count I,II allege discrimination in violation of Fair Housing Act 42 U.S.C &3601 etseq., and Florida Fair Housing Act Fla Stat.760.20 et .seq. for refusing permission to construct a chain- link fence in the front yard. R-1 attached A-2 (9) HBSPOA is a non profit corporation which succeed

corporate developer Hernando Beach Inc in enforcing the deed restriction of subdivision .Through assignment and transfer of developer 's right under the Restriction Agreement On Agreement on April 3, 1999 HBSPOA became the entity with authority ,to modify ,amend and enforce the deed restriction for Hernando Beach South The Florida Housing Act contains Statutory provisions that are substantively identical to the federal Fair Housing Act ,and the facts and circumstances that comprise the federal and state claims are the same. See 28 U.S.C&1367 (a) permitting supplemental jurisdiction over all other claims that are so related to claim in the action with in such original jurisdiction that they form part of the same case or controversy").Specifically ,they alleged that the requested front yard fence was a reasonable modification to afford necessary to afford Newbold and Janke safe and full enjoyment of the property Count III and IV alleged discrimination in violation of federal and state fair housing statutes for refusing permission to construct a deck and wheelchair ramp on the front of the house. Count s V and VI sought an injunction and damages pursuant to 42 U.S .C &1983 and asserted that appellee with the threat of judicial enforcement ,constituted a violation of their first and fourteenth Amendment rights

Hernando Beach Inc and HBSPOA filed motion to dismiss Count V and VI and argued that Loren ,Newbold and Janke did not state cause of action upon which relief could be granted because they failed to satisfy the facors required for injunctive relief .Sasser filed a motion to dismiss all counts in the complaint because he was acting in his capacity as president of Hernando Beach Inc ,and not in his individual capacity.

With these motion still pending HBSPOA filed a motion for summary judgment as to Counts V and VI and argued that it was not a state actor as required to bring suit pursuant to &1983.Hernando Beach ,Inc also filed a

motion for summary judgment and incorporated the argument made by Hernando Beach Inc as well as the argument s that he made in his motion to dismiss. After conducting a hearing on these motions ,the district judge issued on order granting in part and denying in part appellees' motions.(10) Regarding the sign restriction counts the district judge found appellees were not state actors ,which is required to bring suit under &1983.Thus he granted summary judgment to all three appellees as to Counts V and VI. (11)

The district judge then addressed the reasonable accommodation claims. Regarding the chink -link fence claims ,appellees argued that they were entitled to summary judgment because (1) appellants failed to submit complete written plans of the proposed fence for approval as required by deed restrictions: and (2) the denial of the request for a chain link fence in the front yard was not unreasonable and did not discriminate against handicapped persons because they could put a chain link fence in the back yard. As required the district judge viewed the evidence most favorably toward appellants and presumed that Loren correctly filed the request for the front yard chain -link fence.

10 The record does not contain the transcript of this hearing.

11. HBSPOA argued that only the sign count s (counts V and VI) were brought against it. Appellants disputed this claim and argued that all six counts were brought against HBSPOA. Viewing the evidence most favorably toward appellants, the district court reviewed all claims as pertaining to HBSPOA. Nonetheless the district judge found that appellees were entitled to summary judgment on the chain -link fence counts (Count I and II) because Loren ,Newbold ,Janke "ha [d] not established that this accommodation ,even if reasonable ,was denied with discriminatory intent or was necessary to afford Plaintiff

'equal opportunity to use and enjoy 'their dwelling.R5-100-12 Regarding the deck and ramp counts the district judge found that plaintiffs had produced some evidence from which a fact finder could conclude that denial of appellants' application to construct a deck and wheelchair was discriminatory. Id, According the district judge denied appellees' motion for summary judgment regarding the deck and ramp counts (Count III,IV) , which proceeded to trial .Following a four day trial the jury returned a verdict in favor of appellee and determined that they did not discriminate by reusing to approve the request for a deck and wheelchair ramp on the front of the house.13 The judgment ,prepared and signed by deputy clerk also dismissed HBSPOA from the case .12 Following the district court's order regarding summary judgment but prior to trial the district judge granted appellants counsel motion to withdrawn .Thus Loren ,Newbold and Janke proceeded to trial pro -se During pending motion to withdrawn plaintiff's counsel sent to defendants' counsel district judge sent all parties to court ordered mediation which was futile before arriving but plaintiff paid cost. The district judge construed "Plaintiffs Motion For Leave Or Stay And To Proceeding In District Appeal To The United States Court OF Appeal Eleventh Circuit To Proceed In Forma Pauperis For A New Jury Trial With Appointed Counsel And Appointed Expert Witness On A Appeal Of Right R 7-157,as a notice of appeal and denied their motion for new trial and to proceed in forma pauperis because they failed to adequate substantiation to warrant such relief .On appeal ,appellants challenge the district judge's granting summary judgment to appellees regarding discrimination of fair housing statue and appellees violation First and Fourteenth Amendment rights under 42 U.S.C &1983 as well as argue that there was insufficient evidence for the jury to conclude that appellee did not discriminate by

refusing to approve appellants application for wheelchair ramp and deck in front of home. We Note that the various arguments presented in appellants pro se brief are difficult to discern ,Nevertheless we believe that we have addressed the issue presented in our analyses.

II DISCUSSION

A Summary Judgment on Counts I, II ,V ,and VI

Loren ,Newbold and Janke argue on appeal that the district judge erred in granting summary judgment to appellees on their claims relating to the chain-link fence Counts I ,II,and the "For Sale sign ,Counts V and VI. in the summary -judgment context ,we have to constructed pro se pleadings more liberally than those of a represented party. Harris v Ostrout 65 F 3d 912,915 (11th th Cir 1995) (per curiam).Our court 'reviews the granting of summary judgment de novo and appli[es] the same legal standards which bound the district court "Id, Summary judgment is appropriate "if the pleadings ,depositions ,answers to interrogatories and admissions on file ,together with affidavits, if any show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter .Fed.R Civ .P 56 (c) Celotex Corp.v Catrett 477 U.S 317 323-324 106 S.CT 2548,2553 (1986).The part opposing summary judgment must and warrant trial.Fed R Civ P 56 (e) ;Clark v Coats &Clark Inc 929 F2nd 604 ,608 (11th Cir 1991) 'In determining whether a genuine issue of material fact remain for trial ,courts must view all evidence and make all reasonable inferences in favor of the party opposing summary judgment Harris 65 F3rd at 915." A mere scintilla of evidence supporting the opposing party's position will not suffice there must be enough of a showing that the jury could reasonably find for that party' Walker v Darby 911 F2d 1573,1577 (11th cir 1990),

1. The Chain -Link Fence Count I and II

Loren ,Newbold ,and Janke Argue that appellees

discriminated against them by denying their application for a chain link fence in their front yard because this fence was reasonable modification of their property to permit the handicapped residents of their property to permit the handicapped residents Newbold and Janke a safe and equal opportunity for full enjoyment of premise under the Fair Housing Act .They assert that chain link fence was reasonable to permit Janke time outdoors with her guide dog from individuals who might come onto the property. They further represent that the front yard provides a more scenic place her time outside than other parts of lot

Under the Fair housing Act ,a handicapped individual is one who has "(1) a physical or mental impairment which substantially limit one or more of such person 's major life activities (2) a record of having such an impairment or (3) be[en] regarded as having such an impairment 42 U.Sc &3602 (h) (1)-(3) .The district judge correctly considered Newbold and Janke to be handicapped under the Fair Housing Act ,which **prohibits**
(a) a refusal to permit,,,,,at the expense of handicapped person reasonable modification of existing premises occupied or to be occupied ny such person if such modification may be necessary to afford such person full enjoyment of premise...or
(b) a refusal to make reasonable accommodation in rules ,policies ,practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.....
42 U.S.C &3604 (f) (3) (A)& (B) emphasis added);Fla Stat& 760.23 (9) (a) & 9B) identical statutory wording).

The Supreme has decided that discrimination under the fair housing act includes a refusal to make reasonable accommodation 'for handicapped persons .City of Edmond v Oxford House Inc 514 U.S725 ,729-30 115 Sct

1776,1779 (1995) Whether a requested accommodation is required by law is highly fact specific, requiring case by case determination" Groner v Golden Gate Garden Apartment 250 F3d 1039 ,1044 (6th Cir 2001) citation omitted) Under the Fair Housing Act ,plaintiffs have the burden of proving that a proposed accommodation is reasonable .Groner 250 F 3d at 1045; Bryant Woods Inn Inc v Howard County M.d 124 F3d 597 ,603-04 (4th Cir 1997) Elderhaven Inc v City of Lubbock Tex 98 F 3d 175,178 (5th cir 1996)

There is no evidence in this record that Hernando Beach Inc ,HBSPOA or Sasser discriminated against appellant by denying their request for a chain - link fence in their front yard. Appellants failed to introduce any evidence that other houses in the deed restricted subdivision have been permitted to construct fences on the front of their property. Appellees informed appellants that they would approve construction on the back or side of their house .For the specific reason reasons of preventing Janke from wandering from the premises prohibiting her guide from biting anyone entering onto premises and enabling Newbold and Janke the ability to be outside unsupervised ,a chain-link fence on the back or side of house would accomplished the same purpose by providing an opportunity to be outdoors safely within the deed restrictions of the subdivision .While a chain -fence on the back or side yard of their property may not be appellants' preference ,it nevertheless would be a reasonable accommodation for asserted needs of the handicapped appellants . We conclude that the district judge properly granted summary judgment to appellees on Counts I and II relating to the front -yard ,chain-link fence because appellants have not established a genuine issue of material fact to show that appellees discriminated against them in violation of the Fair housing Act by denying their application them in violation of the Fair

Housing Act by denying their application for a front chain link fence ,when a reasonable accommodation complaint with the deed restriction of the subdivision, was available to serve the stated purpose of appellants.

2. The For Sale Sign Count V and VI

Appellants complain that HBSPOA's denying permission to post a "for Sale sign in their front yard to expedite sale of their house with potential judicial enforcement of the deed restriction barring display of sign on the subdivision lots constituted state action and thereby denied appellants rights under the First and Fourteenth Amendments .To succeed on 42 USC & 1983 claim ,a plaintiff must show that the violative conduct 'was committed by a person acting under the color of state law ' and that the conduct deprived a person of rights ,privileges or immunities secured by the Constitution or laws of the United States.'Parratt v Taylor 451 U.S 527 ,535 ,101SCT 1908,1913 (1981) Fullman v Graddick 739 F2nd 533 ,561 (11th Cir 1984) State action requires that the defendant act under the color of state law at the relevant time.Almand v Dekalb County Ga 103 F3d 1510 ,1513 (11th cir 1987) Actions by private organizations may be considered state action "only if [] there is such a close nexus between the State and the challenge action that seemingly private behavior may be fairly treated as of the State itself." Brentwood Acad v Tennessee Secondary Sch Athletic Assn 531 U.S 288 ,295 121 Sct 924 ,930 (2001 quoting Jackson v Metropolitan Edision Co 419 U.S 345 ,351 95 Sct 449,453 (1974) Appellants argument that the threat of judicial enforcement of the deed restriction created by statue constitutes state action ,is unavailing .Although the Supreme Court has held that enforcement of racially restrictive covenant constitutes state action Shelley v Kraemer 334 U.S 1 19-20 ,68 Sct 836 ,845 (1948 Shelley has not been extended beyond race discrimination ,Davis v Prudential Secs Inc 59 F3d 1186,1191 (11th cir 1995) the

record in this case clarifies that Sassser ,Hernando Bch Inc and HBSPOA were not acting under state law.See Sofarelli Pinellas County 931 F2nd 718,723 (11th Cir 1991) recognizing that conduct of private individuals 'does not rise to the level of state action" Therefore summary judgment correctly was granted to appellees on Count V and V I relating to the For Sale sign because appellants failed to establish state action required for a cause of action under &1983. **Plaintiff states: It stand to reason if plaintiff is asking for injunction they have not approved any signs which is unconstitutional in the community or a sign would have been given to plaintiff. Defendants are using Florida Homeowner Chapter to take home owners to court two cases in legal file and plaintiffs and other homeowner's threat letters on file.Handicap under civil right act**B.sufficiency of the Evidence to support the jury verdict On Count III and IV Appellants allege various evidentiary error committed by the district judge in conducting the trial of this case on Count III, and Iv relating to their application for construction of a deck and wheelchair ramp on the front of their house. We reviewed a challenge to sufficiency of evidence de novo ;we review the facts and inferences there from in the light most favorable to plaintiff and determine whether the evidence is so overwhelmingly in favor of the [defendants that reasonable jurors could not arrive at contrary verdict" Adams V Sewell 946 F 2d 757,764 (11th cir 1991)overruled on other grounds Mc kinney v Pate 20 F3d 1550,1558 (11th cir 1994) enbanc) Appellant record in compliance with Federal Rule of Appellate procedure 10 (b) (1)& (2) see 11th cir R10-1Federal Rule Of Appellate Procedure 10 (b) (2) provides that '[i]f the appellants intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence ,the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion. "Fed R App. P 10 (B)The

record shows that appellants attempt to order the trial transcript on the same day that they filed a motion to proceed in forma pauperis on appeal. R-7 161,162 The district judge denied their informa pauperis motion because appellant indigence had not been established and it appeared to the judge that they were attempting to obtain a free transcript for which they were not eligible. Appellants have neither moved to proceed in forma in this court nor provided the trial transcript in the appellate record. Accordingly we can not review whether any evidentiary error were committed by the district judge during the trial of this case and we must affirm the district court when appellants fails to provide all the evidence that the trial court had before it when making various contested evidentiary ruling .Borden Inc V Florida East Coast Ry .Co 772 F2d 750,758 (11th Cir 1985) The appellants in Borden was not a pro -se litigant and our court has not used Rule 10 (b) (2) for prose litigants who have failed to provide transcript in review on appeal .The fifth and ninth circuits however have applied Rule 10 (b) (2) to preclude review when pro-se litigants have not supplied trial transcript in appellate record.See Richard v Henry 902 F2d 414,415-16 (5th cir 1990) holding that the failure of an appellate to provide a trial transcript is grounds for dismissal of appeal notwithstanding inability to pay for it.); Syncom capital Corp v Wade 924 F2nd 167,169 (9th cir 1991)(per curiam) (" Because [appellate did not provide a transcript of trial ,this court cannot properly review the case on appeal "(alteration in original)(citation omitted) Despite construction leniency afford pro se litigants ,we nevertheless have required them to conform to procedural rules. Brooks v Britton 669 F2d 665,666-67 (11th cir 1982) holding that prose litigants are required to mover timely for extension of time in order to file a late notice of appeal pursuant to Federal Rule of Appellate Procedure 4 (a) 5 .WE agree with the reasoning

of the Fifth and Ninth Circuit regarding pro se litigants' failing to provide trial transcript for appellate review which we adopt and hold in this circuit that prose appellants ,like appellants represented by counsel ,must provide trial transcripts in the appellate record to enable this court to review challenges to sufficiency of the evidence. According we affirm the district judge's trial ruling regarding Count III and IV relating to appellants ' application for construction of deck and wheelchair ramp on the front of their home. III CONCLUSION In this appeal ,Loren ,Newbold and Janke have contested the district judge's granting summary judgment to Sasser ,Hernando Beach Inc and HBSPOA on their allegation of violation of federal and state fair housing statue relating to the application to construct a chain -link fence on the front of their premise as well as the decision of HBSPOA to deny appellants request for permission to display a "For Sale sign in their front yard .As we have explained partial summary judgment to appellees was appropriate because appellants failed to show the appellees violated the federal or state fair housing statue by acting discrimination in denying appellants application for chain link fence in their front yard, and they failed to establish state action for their &1983 claims concerning the "For Sale sign in the front yard. Appellants also challenge of evidence to support the jury verdict for appellees as to their denying appellants' application for construction of a deck and wheelchair ramp on the front of their house .We cannot review appellants contentions regarding sufficiency of evidence on the count s that were tried as to the appellants application for construction of a deck and wheelchair ramp on the front of their home because they failed to provide the trial transcript. According ,the district court 's granting partial summary judgment to appellees and the jury verdict in the favor of appellees are affirmed 10/17,2002S/B Birch ,Carnes and Hull Circuit Judges

App 111
Plaintiff Statement

It was our greatest hope that the appeal court would be able to review the intent of congress and presidential order as it refer to the intent of placement of person with mental disabilities in residential community A great burden was put on jury because as the district judge stated he didn't want to hear the case again given instruction to find discrimination intent as well as stated on court orders without pretext evidence and no special treatment for handicap all people are equal theory. The fact that Fair Housing policies that while universally applied tend to impede the ability of certain people with disabilities mostly with mental disabilities; it is also clear that handicapped needing accommodation are not equal to able-bodied person until accommodated.

According to Latest Federal Discrimination law and Litigation Procedural plaintiff doesn't have to prove discrimination intent only they violated A or B of the Fair Housing .Defendants arrived in court claim no duty to fair housing never change deed restriction or allowed accommodation and left the courtroom.

If jury was asked what is neutral rules ;what is pretext or mixed motive is that a requirement for your finding of discrimination intent or could it be disparate treatment or impact ,deliberate indifference. reckless indifference ,discriminatory mental barrier they could not say because they don't understand discrimination law to say whether defendant's were to eliminate barrier for the disabled

Appellants have made their deadlines throughout legal case except period when motion for withdrawn of counsel pending all defendants notify and sent to court order mediation knowing that was futile plaintiff paid fee. Transcript are provided if needed if approval in forma pauperis due to financial burden unable to overcome counsel fee and transcript fee ,expert witness for Newbold and Janke .Statement of proceeding provided by plaintiff

in affidavit form to the best of their ability sent to all parties in 11th circuit record room, with copies of dispositions and copies of legal cases ,statues and other authorities . Form 4 with notary seal sent to all lower courts district and 11th circuit for Newbold and Janke.
Plaintiff cites Krocka vs Riegler 958 F Supp 1333,N.D Ill 1997 citing Watson v Septa Delaying in accommodating

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 02-11090-FF FILED NOV 12 ,2002

NICOLE LOREN
BETTIE J NEWBOLD
and Charlene Janke by and through
VERONICA AGUIRRE PLAINTIFF-APPELLANTS
vs
CHARLES M SASSER JR
HERNANDO BCH INC
Florida Profit Corporation
HERNANDO BEACH SOUTH PROPERTY OWNERS ASSOCIATION INC Non Profit Fla. Corporation

On Appeal from the United States District Court for the Middle District of Florida ORDER(X) The motion of Appellants Nicole Loren,Bettie J Newbold ,Charlene Janke ,by and through Veronica Aguirre ,for (X) recall and stay of issuance of mandate pending petition for a writ of certiorari is GRANTED to and including 31 JAN. 3003 the stay to continue in force until the final disposition of the case by the Supreme Court ,provided within the period above mentioned there shall be filed with the CLERK of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ or upon expiration of the stay granted herein ,unless the above mentioned certificate shall be filed with the Clerk of this Court within that time. S/ Stanley F Birch Jr United States Circuit Judge

App 113

HERNANDO BEACH INC

20150 Cortez Boulevard Suite 9 Brookville Florida 34601-38 (352) 544-1257 Fax 352 544-1253

Dec 31,1998

Mr Matthew Clement
Investigation Specialist
Enforcement Unit December 31,1998
State of Florida
Florida Commission On Human Relations
325 John Knox Rd Ste # 240 Bldg .F
Tallahassee Fl 32303-4149

Re Janke vs Hernando Beach South ,Hernado Bch Inc FCHR No 99-W050H Janke No 99W 049 H Newbold complaint signed listed Charles M Sasser Jr,Hernando Beach South Property Owners INC ,Hernando Beach INC written by the Attorney General Office to be signed

Dear Mr Clement

Enclosed please find copies of our answer/correspondence with Ms Veronica Aguirre and Nicole Loren concerning their request for a fence in the front yard ,a multi purpose deck in the front yard and a poured ramp in the front yard .We have denied each of the their request for reasons mentioned in our reply attached to each particular request.

This home is in Hernando Beach South ,which is a community of 425 lots with approximately 100 homes at present. Hernando Beach South is a deed restricted community and we have enclosed a copy of the recorded deed restrictions for your record.

Hernando Beach Inc was not involved in the sale or closing of this resale. This home was purchased without these improvements having been made. It is customary that the buyer receive a title insurance policy which states the official record book and page of the restriction and the

property is subject to those recorded restriction .We can not speak for the particular title insurance as we do not even know who they were. The Hernando Beach Property Owners Association Inc delivers a welcome basket to new resident that also includes a copy of deed restriction

Hernando Beach Inc has not discriminated against the occupants of 4065 Jewfish Drive ,but we uphold our recorded deed restriction and all home owners and lot owners are required to abide by these restrictions

Your very truly

S/B Charles M Sasser Jr

President CMS jr /saa cc:file

Defendants entire letter speak of deed restriction; no statement that they will change deed restriction and allow approval for front handicap accommodation rather than rear :nothing in the letter about slope this great safety concerns to Commission or Plaintiff's ever written as stated in the courtroom

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February 12.1999
Mr Matthew Clement
Investigation Specialist
Fair Housing Investigation and Enforcement Unit
State Of Florida
Florida Commission On Human Relations
325 John Knox Road Suite 240 Blg F
Tallahassee Florida32303-4149
Re Newbold vs Hernando Beach South A/K/A Hernando Beach Inc
FCR No 99-W049H
Dear Mr Clement
On December 31,1998 Hernando Bch Inc made Copies of its answer/correspondence with Ms Veronica Aguirre and Nicole Loren concerning their request for a multi -purpose deck in front yard and a poured ramp in front yard .Hernando Beach Inc denied their for reason mentioned in the reply letters attached particular request.
This home is in Hernando Beach South which is a community of 425 lots with approximately 100 homes at present. Hernando Beach South is a deed restricted community and a copy of the recorded deed restriction for your record were included with the December 31,1998

response. Hernando Beach Inc was not involved in the sale of or the closing of this resale home. This home was purchased without the requested improvements. It is customary that the buyer receive a Title Insurance Policy which states the official record book and page of the restrictions and state that the property is subject to those recorded restrictions.

Hernando Bch Inc can not speak for the title insurance company which closed the sale as identity of that company is unknown to Hernando Beach Inc. In addition ,the Property Owners Association typically delivers a welcome basket to new resident that also includes a copy of the restrictions The reason for denial of the request for a deck in the front and a ramp are stated in the October 16,1998letter from Hernando Beach Inc to Nicole Loren Hernando Beach Inc has not discriminate against Bettie Newbold but every effort is made to uphold the recorded restrictions and all homes and lot owners are required to abide by these restrictions as Previously suggest to you By Hernando Bch Inc a personal inspection of subject property would assist you or another investigator in understanding of reason for denial

Your truly S/b David C Sasser cc; Hernando Beach Inc

Veronica Aguirre was in Chicago ,never spoke or wrote to defendants .Commission On Human Relation are to establish local fair housing offices nothing available in area six hours one way from Capital office and two and half hour drive one way for medical treatment as a average physical is unable to treat a severe developmental person that was in good health arriving into the community then under some type of mental trauma after falling down the stairs. Plaintiffs 'attorney inspected home and encourage commission personnel and Attorney General Office to do the same.

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(a) Malladi v Brown 987 F Supp 893 (MD Ala 1997(Summary Judgment order is (pg 77)improper if plaintiff offers evidence from an inference of retaliation may be drawn)Motions have inadequacies as finder of facts.(Pg 42-49)The courts' second preliminary injunction order not preclude reconsideration of the state action issue under the law of the case doctrine. Christianson v Colt Industries Operating Corp 486 U.S 800,815-818 108 Sct 2166 ,2177-2178,100 Led 2d 811(1988)Oladeinde vs City of Birmingham 230 F 3rd 1275,1288 (11th cir2000) Although the doctrine technically also applies to legal ,prejudgment ruling of a trial court, more often the doctrine find voice in describing the effects of an appellate court ruling in Oladeinde" Under the doctrine both the district court and the appellate courts review new evidence, erroneous decision changes in controlling authority .Reviewing of this case it entirety the[real estate sign] deed #9 ,4,18,19,24 (pg 29), is nothing more than the end of a civil right case filed in the federal complaint a preliminary injunction Id. 42-49is often issued.

The denied preliminary injunction that operates in futuro-in the future was due to the respondents making false statement to Chief Federal Justice Elizabeth Kovachevich stating they approve signs as stated in deed restriction however the community had a total ban on any signs which is unconstitutional .The community hasn't found one sign they like for twenty year and under [false pretext] [taken homeowner to court] hardly saying a action in state court is not state action is beyond petitioners understanding [cases in legal file .]Deed restriction research shows no changes in sign count only a few changes on issues that favor the developer

.It stand to reason if petitioners are asking for a preliminary injunction help from the federal government there are no signs .Reeves Vs Plumbing Co 120 S CT 2097 ,2108 "claim reason was either false or did not actually motive the challenged action pretext" The first problem with (section 9 deed pg 29) the -right-ways are also refer to as easement they belong to Hernando county and the street is public and they receive all county services .The community doesn't own the easement or some vacant lots are private property as well as petitioners ,shall enter on vacant lot without due process or county hearing The lower courts were not convince there was a real threat however it was real to homeowners and causes stress and burden for their families these sample of threat letters to other homeowners perhaps thirty or more in the legal file .It stands to reason that there aren't any approved sign or the threat letters would have stated instruction on the whereabouts of these approved signs.

This community and Charles M Sasser Jr doesn't have the right to make judgment on real estate sign never aware of the reasons homeowners would be selling loss of employment or family problems Never again should a homeowners relate their problems for permission for a sign and be denied on their own property. Since legal cases were filed could the judge have asked for a picture of the approved signs their grounds in court was agreement or contract under the Fla Homeowner Chapter and violation of the Fla. Constitution and bound by U.S. Constitution . 720.301-312 ,720.3075

Speaking with a real estate relocation expert on the other coast of Florida she stated that there was a supreme court case and now all deed restricted communities on that coast of Florida allow signs and made arrangements to

have a local real estate agent willing to come into the deed restricted community with the very first real estate industry sign we waited for the preliminary injunction that homeowner wanted was granted covered sign during dispute December through April then denial of preliminary injunction came plaintiff counsels said the courts wouldn't revisit the issue .As soon as word came of the denial of injunction the association board faxed a copy of the court ruling to our real estate agents office and then a real estate management company that the association hired called and some home association members and board member names taken down of people giving their name refer to as a group of rabble-rouser and other terms attacks and naughty language 42 USC12203 42USC1982 42USC1985harassment intimidation and tremendous distraction for the real estate office for three days forced the real estate office to remove sign ,still calls came in about the real estate sign post and petitioners purchased the post from the real estate office and install a by owner sign which was always on private property line not easement.

Petitioners are asking this court to review de novo this case U.S Of America vs Popa 187 F 3rd 672 1999 U.S App Lexis 22425 hang up in petitioners telephone in large amounts was understandable with the violation of their community rules but involvement with petitioners real estate firm causes harm also to real estate client.

Informed by the real estate office that they have been through this before David Sasser Attorney At Law Vice President of Hernando Bch Inc takes homeowners to court. Then came a letter from the real estate management company hired during litigation that states total ban on any signs in community [ability to place a lien on property] during his disposition he stated the

association told him no signs in the community. This letter from real estate management company is in the legal file and discovery from association that their statement never approved any signs. Once this home was sold by owner sign with a outstanding respond by drive by interstate buyers and showing offer still coming in on the home after sold but a sad affair for our mother, petitioner called real estate agent as we were still under contract to do the closing to avoid lawsuit force to paid real estate commission.

It is well stated third party interference is not allowed with home base program .The caretaker has sole judgment because they have the understanding of the daily needs of the caretaker and developmental person in home modification because they are all quite different and never able to compare them to just a physical handicap person there is no question the stress ,and the harm created from this occurrence .

The most important issue is that retaliation hinder and impede her fiduciary duties as a caretaker Florida health surrogate and special power of attorney that association and developer legal blocking with motions the removal of disabled injured family members due to the denial of handicap accommodation , personal injury, and discriminatory attitude barrier the reason for leaving the community and needing the real estate sign in the first place and inference of a civil right to protest with a by owner sign. 42 U SC 1986

Another important issue of retaliation is that it hinder impede and stoppage of the real estate agent fiduciary duties hired to sell the home as quickly as possible to remove the injured disable from this community with all their resources under contract force

to pay real estate commission of eleven thousand dollars closing cost which includes the cost of a nationwide real estate industry sign even if petitioner sold their step brother monetary issues in the home alone. This case has future issues the President Of The United States plan to create a program to make homes available to the disabled / handicap families with a population in the millions across the United States .As it stand in this case a disabled person respond to nationwide real estate book with a fair housing logo under able to see the model. Will the handicap When everything is said and done reality is present you will be asking a Illinois Federal Judge in a state that is very strict on handicap laws private or public to enforce a mandate that must go through the subject of the case a blind and severe developmental person where competency is a issue receiving federal funds and if the judge question the reason because a blind severe developmental person needed front main entrance handicap accommodation on private property and a blind severe developmental needed a companion and support dog along side the disabled and it is not allowed in a Florida deed restriction community they should be in the rear of their private property. Whether we are speaking about a nationwide television and radio outcry of the public about a child in the last stages of cancer and a tree house with a Florida deed restriction community asking for removal for the aesthetic of the community only after nationwide press coverage if the parents gives a physician report to this community approval group that community would allowed the child final days with this tree house again this was a single family home on private property.

(B) West Virginia vs Barnette 319 US 624 SCT 1942(the fundamental rights may not be submitted to a vote ") by a association board; Petitioners haven't given up

their constitutional right as free citizen of the United States when they moved into the Florida deed restricted community nobody has a right to take these rights family unless there is a issue of safety in one hand a constitution and in the other deed restriction when we walk into this home Constitution vs deed restriction the court must say which is the highest law of all States lands. Respondents hand crafted unfounded safety issue in court but the government issuing the permits claim no safety risk it is more of a risk with out accommodation and a great risk to free speech.

This legal case covers all counts in the federal complaint. Charles M Sasser Jr the creator and beneficiary of an unconstitutional scheme and a history of strenuously legal enforcement and intimidation and not wanting to make any change to deed restriction is liable to any victim engaged in a futile attempt to remove sign count would be answered by take it or leave it .The individual who wants power or domination over others and willing to infringe on their freedom or rights in order to satisfy their desire for a government to aid their particular pursuit that parties or entity brings the court in conflict with a free citizen rights under the constitution . Whether the association was active or non active they reported violation to the model .Letter written and signed Shirley Aiken Officer and Charles M Sasser Jr , written and signed, legal cases filed by David Sasser Jr Attorney At Law. Charles M Sasser Jr on deed restriction #9 sign count has for twenty years reserves unto it self shall have the right to display a real estate sign on lots it owned something needed as they move out of the community no longer is there model staff to show lots, and banks ,service company ,construction company allowed to post signs which is a good period of time to homeowner

selling their home claims they can not locate the lot however there is a county permit in large frame and post in front of lot that other community across the United States have used to locate a work site .[pictures available] Under the fourteenth amendment the plaintiffs should have had the same right no person or business shall have a greater right or become a monopoly a unfair trade policy. During federal litigation all signs were removed in the community .

.Petitioners without a sign in route to a model sold as soon as completed or buy backs of homes or lots [in public records]. Homeowner not allowed even a sign inside home window on private property letter sent to owner community notice in legal file.

Fla Homeowner Chapter720.31-312 covers parcel of land known as the common area titled to the association and shared by one percent by all owners and 307 pg 3 (b) doesn't cover parcel of land used for commercial ;doesn't cover a parcel for the purpose of constructing improvement for resale ;models sold as soon as completed. Petitioners are to be told by a association board some real estate agents even worked part time at model not allowed to display a by owner sign in front of petitioners private property list with real estate office paid eleven thousand dollars instead of no cost with by owner sign. Petitioners doesn't feel they should have to place a newspaper ad for over a year as one of the past owner. If association board wants no sign they should pay all real estate commission fee on homes owners selling the policy would stop quickly. A new concept for homeowner association protect the right of the homeowner instead of developer. .Lot and homeowner

that pay the bills their signs are on interstate highway outside the community until the county removes them on the road side.[pictures available] It is hard to make policies on land when there is no ownership which is called intentional tort or it substantially interferes with owner use ;a personal enjoyment of land conversion that is directed against property it is unauthorized assumption and exercise of owner rights over goods chattel belonging to another to the alternation of their rights and possession and consent or legal privilege. Under the Fla . constitution sec 1 the acquire ,enjoy, and [protect] property same as 42USC1982 1983 bound by XIV 1,2 IV sec 2 of 1983Fla Sta CH 617 , grants to homeowners' associations and developer extensive rule making powers. These deed restricted communities such as this one owe their lives operating authority to an extraordinary degree of state and local government. Deed recorder and local government developer submitted the deed restriction along with plat application and the county approved application without condition(remove this constitutionally-offensive rules and we will approve this application when you select which content speech the community will allow whether it the banks ,construction service, developer , real estate industry ,by owner which each have their own message against some design and message the community on commercial sign they have yet to provide, approve and a judgment of the local government. The state grants association assessment or taxation authority and give it rights impose and foreclose upon liens to collect it taxes and grant extensive land use controls normally a function of government given right to the community to private property rights; to the constitution ; free speech and handicap laws has gone pass limits .State and Local government is extensively involved property taxes ,street

easement, roadway maintenance ,code enforcement, ,police and fire protection ,building codes and permits and share authority hardly one could say no State involvement in this non gated ,public street with a public business operating in this so called private community. In Pitts vs Pine Valley Golf Club 695 F Suppl 778(D.N.J 1988)the rule was analogized to a zoning ordinance land use restriction and viewed as state action was needed to correct. Golf Clubs rules must join club to own home in community

(C) Steffel vs Thompson 415 US45294 SCT1209-1294 (One seeking to exercise free speech need not first violate the restriction and expose herself to judicial enforcement of restriction to challenge threat of the act.(hand biller need not expose himself to actual arrest or prosecution in order to challenge portion of criminal trespass Statue of first amendment grounds. citing Perez v Ledsma 401 U.S 82 124-126 [1971] Powell vs Mc Cormack 395 U.S 486,49 89 SCT 1944 1952,23 L.ed 2nd 491[1969]Shea v Esenstein 20000 Const.Amend 8 Minn 208 F3rd 712 ,24EBC1065 First Amendment issues doesn't become moot, Bischoff vs Osceola County Fla 222F .3rd 874(11th 2000)
Petitioners sought (and because of damage claim continues to seek an answer to this question Did Petitioner have a right when silenced as other to put up sign without subject to judicial enforcement of the sign ban ? We ask for de novo review.
(D)South Carolina vs Katzenbach 383 US301 not moot has been the doctrine of standing set in a time at the start of litigation /Tennessee Valley Authority 306US118.83Led 543-59SCT366 [1939] "If a person is challenging a government act because it violates a right belonging to that person then that person can claim injury sufficient for standing.

(E)Florida USC 1,Amendment 2000 Code Book Deed recorder

"The party seeking to uphold a restriction on commercial speech carries the burden of justifying it and this burden is not satisfied by mere speculation or conjecture as to the existence of harm to be readdressed by restriction .Even partial restriction on commercial speech must be supported by showing of existence of some identifiable harm to be addressed by restriction the fact that the State doesn't insist on outright ban on speech doesn't relieve the State of its burden of identifying a genuine threat of harm . "

This community is rural single family homes with private property ,public street county easement no safety issues no reason not to allow a residential small real estate sign a mean test would not pass .They claim clutter signs then there is a problem the association needs to address the reason everybody are selling their home in the community .It allows for " buyer beware ". Claim lower property values Palm Beach Florida has real estate sign in front fences it doesn't appear to lower property values and we are sure if a member of their family needs handicap accommodation in front there wouldn't be any problem.

(f)Don Porta Sign Inc vs City of Clearwater 829 F 2nd 1051-1054)(1987)Eleventh Circuit Court of Appeals recognizes a State "substantial interest" in preserving aesthetic "This case is challenged by petitioners that are not concerned with the aesthetic but the flow of free speech and the protection of the Florida U.S Constitutions .This case doesn't apply in this case it is a small residential sign most homeowner just replace their homes there should be some type of classifying of commercial signs in law. The local government interest employed by property tax payee any interest wouldn't warrant the monetary harm to homeowner forced to seek

real estate agent service and pay real estate commission instead of a by owner real estate sign at no cost to home owner. The local government would have to ban all residential small real estate sign in front of private property with public street and county easement in the entire county. Petitioner should have the same right as other Hernando county residents under the constitution all citizen have the same property rights in each state North Olmstead Chamber of Commerce vCity North Olmstead 2000N.D Ohio 86 F Suppl 2nd 775 Knoeffler v Town of Manakating 2000 SD NY Content based restriction in City ordinance are unconstitutional "
This is a commercial business zoning case time place size restriction used for lighted commercial signs (time) (size) for protection of public and vehicle traffic (Place)set backs for sidewalks and roadway They are not able to use aesthetic in business sign in the State of Illinois content based we may not like the design or word but only safety is a issue of the side of building not blocking or causing vision problem for vehicles. Aesthetic can mean many thing to many people ,different meaning in the eyes of different people using aesthetic can become broad over restricted seldom ever used, the important thing is the speech is allowed to flow The community cited in this legal case this is a time and place size restriction lets see how this would work in this case [time] how would a seller know when a buyer is passing by [,place] the best selling advantage in front of home being sold,(size) interstate buyer are looking for a standard nationwide real estate sign or by owner sign a disadvantages for the homeowner as in Quail Creek Vs Hunter 538 So 2nd1288 This case is nothing more than a legal hoop hole to ban real estate signs as Hunter and all other citizen that followed asking the court for their rights said asking the court with his 2x4 sign with his name and with phone number

felt disadvantages in selling his home out of area buyer not aware this community policy that just drive through a area again single family home on private property needing by owner or small residential for sale sign. Under consumer law why should the consumer be forced to purchase this sign if under real estate agent signs included in commission ,no homeowner is forced to install the sign but for the homeowner that want to install in front of their property a industry nationwide sign and see a advantage to on site marketing they should be able.

(G) Blum vs Yaretsky 457 US 991 1,Led)Encouragement]either overt or covert the choice must be in law be deemed to be that of the State " It is a well known local fact there is a total ban on any signs which is unconstitutional even the county commissioner lives in the area and attends association meeting. Federal court not reviewing any new evidence or willing to hear the issue after ruling or review Hernando County sign ordinance [identical]time ,place ,size restriction gives the community encouragement of restriction .Hernando County of political graffiti would restrict or suppress then every locality in the country can suppress facts that reflect poorly on locality. If petitioners posted a sign in front that stated reason our home is for sale by owner and phone number it would be content based this is not the way to greet a new buyer. This community and the Hernando County violated our first amendment rights and section one of the Fla, U .S Constitution "all political powers is inherent in the people .The enunciation herein of certain rights shall not be construed to deny or[impair] others retained by the people. Federal voters act how do put election feeling in a time place size a excise of voting rights anytime . We were all voters in the family always had voters signs in the yard in the State

Illinois .It is very uncomfortable for our family to attack our own government we must find state action ,law cases [state action] Fla. 760.301-702.312,720.3075 Homeowner Chapter any legal case on a deed restricted community is updated on that statue and are intertwined in deed restriction .County commissioner and deed recorder state actors ,statues are state action , permit states see your local association, in Goldberg. State Statue is state action and their legislature creates statues bond by U,S Constitution XIV sec 1,2 IV sec 1

(H)Wilmington Parking Authority 365 U.S 715 -722 (1996)"only by sifting facts and weighting circumstances can the non obvious involvement of state in private conduct Private entity have the right to form that all and the entire bill of rights petitioners answer to one government . There are far greater minds on the constitution and several opinions on the issue but let me say perhaps bold to this court but humble in words the people gave the right to our founding father to form branches of government ,the power to create the bill of rights ,in forming the states the only subject they spoke about that fine day they wanted all states to give their citizen the same rights [a code of conduct for the nation or all States] perhaps by their golden rule belief dealing with a serious discrimination of one race they made a bold statement which was not look upon in in favor at the time but wanted to send a clear message to all the States this is the conduct we all shall follow. . The courts had to estab lish the right when the States didn't enforce one of the issues of the bill of rights "All Are Equal" of our founding father, people make conduct not States so when people speak of private conduct the people were united as a nation there is no longer private conduct when it comes to issues of the constitution. The founding fathers with their wisdom knew States would

pass laws it was a safety built into the constitution nobody could make laws but Congress on the constitution. Deed restricted community agreement or contract may not write anything on the constitution of free speech only state and federal legislature and Congress. bound by 1983 XIVsec1,2 IV sec 2

(I)Treatise On Constitutional Law Volume 4 Section 19.1 to 20.61 Rola d Rotunda John E Nowak page 433-435 20.31 in any legal library. Speak of small residential real estate sign and county ordinance. Copies given to lower courts.

(j)C.F Indians vs Anderson 303U.S 95 100 82 Led 685 ,58 SCR 443 [1938]page 22But ,clearly ,when the State make a Classification as to what contract are permissible that classification is state action" As on Homeowner Chapter 720.301-702.312 720.3075 the extent to which state law may relegate conduct to private ordering is a federal question"
Fla Homeowner Chapter stated rather than regulate or monitor the agreement with a state department they allow Chapters member to write contract or agreement so they honor agreements without review. Fla Constitution honor contract and agreement no contract can violate the Fla ,US constitution .Agreement prepared by Shirley Aiken for Charles M Sasser Jr Attorney At Law ,[Johnston & Sasser law firm] David Charles Sasser Attorney at law filed and modifications, all aware of total sign ban filed case under false pretext claiming power under Florida Homeowner Chapter

(k) Tulsa Professional Collection Service v Pope 485 US 478,486,99 Led 2nd 565 108 SCT 1340 [1988]State action when community is performing duty of state involvement in the private action on the constitution ,

county building and Zoning overridden county and local laws at all times,

(l) Mayer vs Riley 465 F 2nd 630 page 639 deed restriction They are illegal to execute and to enforce to rubber stamp deed restriction with out review surely too great a price to pay for vindication of constitutional rights. The deed recorder is not insulted from judicial review" 42 USC 12202 state immunity deed recorder inspector for state .A state may act through different agencies either by it legislative, its executive or it judicial authorities and the prohibitions of the fourteenth amendment extend to all action by one or all Pg 637 Page 640 Moreover this court official recording of these documents is likely to give them legitimacy and effectiveness in the eyes of laymen which they do not have in law The case goes on to say the bill of right stating free speech. Deed restriction no rules or sole discretion

(m)Dillard vs Baldwin County 53 F Suppl 2nd 1266 · County Commissioner and deed recorder are state actors Taken oath to protect resident and constitution handicap accommodation bonafide safety and state interest .

n) Borrero vs Metro Dade 19 F Suppl 2nd 1318

"A reasonable official would have fair warning that her action" of not reviewing deed restriction under sole discretion and aesthetic that would warrant publish of written rules to protect the State and U.S Constitution Bill of Rights. As a Hernando County building and zoning a employee was personally held liable by Attorney General Office Petitioners very uncomfortable forced to attack our government to find state action"

The community during federal litigation voted to install a bulletin board in the boat area so homeowner could place a card to sell their home ,never changed deed restriction no mean test. Pictures available. A interstate real estate buyer would just drive by not even notice or feel it some rules posted. Mean test seldom used is not to restrict speech but to allow the free flow of speech and done by governments. A mean test would pass if you are a condominium on the thirty nine floor a real estate sign wouldn't serve any purpose but a bulletin board in a lobby open sales room would allow free speech. This community in a rural area ,private property ,public street no safety issues there is no reason why a residential small real estate sign could not be used by homeowner the mean test for bulletin board would fail. The community voted during litigation to allow a sign in front of lots stating cleaning boat perhaps a time and place and size restriction sample for the court never changed deed restriction .Franking they need signs for the protection of children on their water way besides county marker signs instead of boat cleaning .There isn't any monitoring of deed recorder one letter from the community can violate a free citizen rights, disable senior ill on limit income that can afford a attorney would just move. As the county commissioner states the plaintiff needs to take the matter to court this is a private community .They are private when it suit them non gated community open to public street ,profit business open to public inside community , but when then petition the county for project that have federal funds they don't speak of a private community.

(o) Goldberg v 400 East Ohio [Condominium Owners Illinois Statue]State condominium act prohibited adoption of any rule which impaired First Amendment

right .Another outstanding ruling but could we have it nationwide XIVsec1,2 IV sec1This is a political flyer taken around to floors of the building , in a doorman building free speech claim , reading the case appears more of a safety issue on the part of 400 East Ohio. Case states Statue is state action" Statue states" any rule written that violate the first amendment is void or null."

This case has everything to do with the United States [Constitution] 1983 and the [statue] confirm the [words] where is the[origin].To say it is not state action until a judge writes a order "Your Honor you can not do what the first amendment states until you write a order to violate the first amendment this undermines the chilling lack of free speech .Petitioner would hope they wouldn't write a order they took a oath to protect the constitution and the bill of rights for all free citizen; and a promise to all citizen made.

(p) Marsh v Ala 326 US 501

There is no reason for depriving these people liberties guarantee under the first and fourteen amendment than is curtaining these freedom with any other citizen these are free citizens .Surely as a nation of all free citizen we wouldn't ban or restrict any citizen right to free speech any place in the nation

(q)Gerber vs Long Boat Harbor South 724 F Suppl 884

In Elizabeth Kovachevich Chief Justice of the U.S Middle District Tampa Florida in her finest hour wrote"[Each person]under the color of law of any State subject a citizen to deprivation of right shall be liable to that person .It is an exercise in sophistry to posit that a court acts as State when enforcing racially restrictive covenants but when giving effort to other provisions of the same covenants they are not state actors. Display of one portable U.S Flag In this case, the substance of Hernando

Beach South ban on homeowner signs violates the first Amendment as does the restrictions' application ban plaintiffs Loren from placing a "for sale sign on her home Control free speech what the community feels should be spoken and who should speak. City of Ladue v Gilleo 512 U.S 43,114 SCT 2038 129 Led 2nd [1994] Linmark Association Inc Willingboro 431 U.S 85,97 Sct 1614 52 Led 2nd 155 [1997]

The court has previously recognized that judicial enforcement in Florida of rules and restrictions banning or restricting free speech constitutional of validity of speech ban or restriction is properly subject to federal judicial scrutiny under the first and fourteen Amendment in an action under 42 USC1983 .Fla Constitution #4 No law shall be passed [to restrain] or [abridge] the liberty of free speech and press. Chief Justice is Protecting the Fla. US Constitution as she took a oath to do so. Petitioners ask this court to review de novo this case so a conflict doesn't remain as stated in Goldberg it appears this case is always cited .Yet Goldberg they took care of their own State of Illinois resident and resolve their issue on the matter written into statue that repeats words in 1983

(r) White Egret Condominium Inc 379 So 2nd 346 Fla 1979 No state action needed for residency age requirement age discrimination 358 So 2nd 1084 (1977)

(s) Elrod v Burns 427 US 347 373-374 96 SCT 2673 2690 49 Led 2nd 547 (1976)
"The loss of first Amendment freedom for even a minimal period of time unquestionably constitutes irreparable harm

(t)Dan Glickman v Wileman Brothers & Elliott 117 Sct

2130 138 Led[1997]page 7,8 Board of Trustee of State Ny v Fox 492 U.S at 480 Edenfield v Fane 507 U.S at 770-771 the secretary has failed to establish that these cases advertising program satisfy any of these prongs of the Central Hudson Test and the City of Ladue vs Gilleo 512 U.S 43 52-53 may diminish the government rationale for restricting speech in the first place. Florida v BJF 49 U.S 524-540[1989} raises serious doubts if Florida is in fact serving with this statue the significant interest Rubin Coor Brewing 512 U.S at 489 "bring question to the purpose of restriction" Petitioners bring question to the grounds and motives for the restriction on free speech restriction forces on homeowners in a rural area on private property.

(u) Parks v Ford Williams 556 F2nd 132 pg 17-22 speak in great detail of state action and state coercer" In reviewing other homeowner request that were reviewed by the association and developer both denied give great questions but their overriding Hernando County Building and Zoning and involved in government function listed on permit appear to be state coercer.

(v) Brock vs Watergate Park 502 So 2nd 1380 Fla 4th DCA 1 much more than a company town at least in those area seized for it self control over rights and liberties of it residents {legal term seized as in 1983} People may have to live in such a company town but when they do they should not be forfeit basic Constitutional freedom out of fear from threat or reality of judicial enforcement of deed restriction that abridge those very rights .This has been a problem as far back as the Pullman Palace Rail Car Company town.

Article in legal file Plaintiffs Objection to Summary Judgment .See generally Steven Siegal ,"Article The Constitution and Private Government: Toward the Recognition of Constitution Rights in Private Residential Communities Fifty Years after Marsh v Alabama"6 Wm & Bill of Rts .J461(1998)Wm & Mary .No matter how long it takes petitioners want this court opinion on this issue our interest we have the a lifetime of pain of permanent personal injury. Petitioners ask this court to review de novo

(w) Parks vs William 556 F2nd 1380 Fla 4th DCA 1"All community that open their community to the public they are bonds to the same state and federal laws .Stated in Community Resident Manual in legal file bond to state ,local federal laws. The essential principal and brute remain of March ,Logan Valley Evan vs Newton " Shelly vs Kraemer 334 US1 -19-20 68 SCT 836-845 (1948) In the pantheon of constitutional liberties, that is probability a dubious distinction and a number of reason could be marshalled to support elevating one right over the other of historical significance and current value .Furthermore any unstated but perhaps lurking "slippery slope" concerns were the rule in Shelly extend to the First Amendment rights ultimately provides unsettling justification for shutting the courthouse doors to protection of the basic First Amendment freedoms altogether.

Yet as the Chief Justice recognized in her opinion in Gerber under the rule of Shelley there is no logic reason for distinguishing between judicial enforcement of racial covenants or those that abridge speech rights in terms of state action conclusion. Shelly had a strong message of issues of a buyer and seller on land right

with conflict to deed restriction or land use restriction as in this case the defendants exhibit of purchase and closing of home but doesn't allow the plaintiff the right to form whether it the Fla or U.S constitution Or Florida Homeowner Chapter.. Petitioner support Chief Justice views and ask for this opinion of this court. The community not only didn't allow handicap to remain and denied petitioner their own right to form under the Florida Homeowner chapter.

Frankly it should not matter who you are or where it occurred using the theory All people are equal petitioners don't believe that a handicapped person needing accommodation is equal to able -bodied people until they are accommodated "Hardly the State avoids Handicap, civil right, laws leaving private individual free to impose such discrimination as it see fit or violate the Fla Constitution bound by 1983 governments took a oath to protect the citizen and all Constitutions given by all the people of the nation united by the bill of right a code of conduct. Hernando County can be called into this so called private community because some homeowner felt another homeowner car in their driveway most of which is on [private property]that it look to them as junk so owner had to prove the car was in operation and titled as state authority but unable to come into the community on fair housing it becomes a private community according to commissioner petitioners must take the matter to court using two different standards. There is quite a different between Condominium law joint ownership under one building and close living arrangement and standards and even one can say even condominiums once you[enter that threshold] inside the unit purchased that becomes

private property ownership. Rural area Single family homes on private property on public street county services and easement, no gate ,not private street it becomes like any other community in Hernando county with a joint ownership of a lot refer common area. Even a sign inside the dwelling window is over the threshold and violation of private property rights.

(x) Evan vs Newton 382 USC 296 When private individual excise power or carry out function government in nature they become agencies or cause them self to become agents .Any issue of the Constitution and county building and zoning is a function of government permit states see local association.

(y) Pitts vs Pine Valley Golf Club 695 F Suppl 778 (1988)PG 3,4 Discrimination case let say it is for handicap ,developmental person L.C Olmstead Shelly or Constitution .Unconstitutional zoning law state function made by association state action taken for the victim and to prevent zoning law being written In Pitts v Pine Valley Golf Club

"In order to find state action the court need not identify a statutory provision where a custom having the force of law is in evidence"[Legal cases in file]]Florida Homeowner Chapter Statue the vehicle with non review of these agreements or contract bringing the court in conflict of a free citizen rights. Case states "However lower standard are applied to plaintiff has made allegation of a classification scheme in question was arbitrary to legitimate state interest" [fair housing , handicap under civil right Act, the constitution are legitimate state interest.]

(z)City of Ladue 512 U.S 43,49-53 114 SCT 2038 ,2043-2044 129L.ed 2nd 36 (1994)(noting also ,at n.9,that regulatory distinctions among different kind of speech may fall afoul of the Equal Protection Clause ") By completely banning any homeowner signs it unconstitutionally "foreclose[s] an entire medium of expression ',Id 512 U.S at 55 114 S. Ct.at 2045 depriving petitioners what both unique and important and cheap and convenient form of communication on site to carries message to other resident and their families and interstate buyers that first look at certain area by driving around petitioners had already loss more than half the real estate season.
(a) Latera v The Isle At Mission Bay Homeowners Inc 655 So 2nd 144 (Fla 4th DCA 1995) lower court has recognized judicial enforcement of community rules or restriction banning free speech constitutes state action subjecting the rule or restriction to review under the first amendment and fourteenth amendments in an action under 42 U.SC 1983(recognizing that "right to free speech...was abridged by covenant in Gerber")
This deed restriction ban on homeowner signs runs afoul both reasoning prong for condemning such a restriction on free speech grounds. By allowing limited commercial message on sign but barring all others messages the scheme is prohibited form of content based discrimination according to deed restriction
but it was a total ban in practice unconstitutional that all defendants were aware"

(b)Fla Stat& 689.18(7) Florida Homeowner Chapter Enforcement: This section shall not vary ,alter or terminate the restrictions placed upon said real estate contained in restrictive covenants or reverter or forfeiture clause and all said restrictions may be enforced and violations thereof [restrained by a court of competent jurisdiction]whenever any one of said

restriction or conditions shall be violated ,or threat to violate the same be made by owners or parties in possession or control of said real estate ,by an injunction which may be issued upon petition of any person adversely affected, mandatory requiring the abatement of such violations or threatened violation and restraining any future violation of said restrictions and conditions. Homeowner that violated the deed restriction pays all attorney fees. Support given by statue and courts ,never reviewed by deed recorder or no monitoring of agreement or contracts by state on statue Homeowner Chapter

(c)Condominium Statue Fla & 718.113(4) Petitioners respect the right for condominium owners to display a United Flag and agree with the outstanding ,bold court ruling Chief Justice Middle District Tampa against the community the tyranny of community's majority only wish that our free speech under Fla .US constitution was given when needed in December ,1999 asked for judgment and then injunction four months later denied that only increase the struggle. The law of case doctrine is not an inflexible command or limit on the courts .With preliminary injunction court order in conflicting cases, facts available but refusal to listen beyond preliminary order written words in summary judgment not allowed to go to court with witness of total ban as stated in court motions and the fourteenth amendment issue of others allowed signs. but plaintiff not allowed Preliminary injunction P 47)Cases cited on Summary order: pg 77Celotex Corp vs Catrett 477 U.S 317 (1986) Masushita Electric Ltd vs Zenith Radio Corp Industrial Co475 U.S 574,586 (1986) Anderson v Liberty Lobby Inc 477US 242,255(1986) Augusta Iron &Tool & Steel Works Inc v Employer Ins of Wassau 838 F 2nd 855,856

(11th Cir 1988) where is the evidence from the non moving party they waited after summary judgment to state that this is a total ban ,there is a plaintiff real estate agent affidavits, delayed by boiler plate answers ,motion to compel without granted attorney fees then discovery interrogatories from association never proved any signs etc." and delayed to last to review other disposition then Charles M Sasser Jr disposition show clearly no signs in the community This court may not decide dispute at summary judgment "then why not order that the issue to go to trial Fernanadez vs Banker National Life Co 906 F2nd 559,564 (11th cir .1990) Could this court tell us what more state evidence is needed we have proved close nexus defendants cited case Brentwood Academy v Tennessee Secondary School Athletic Assoc 121 S.CT 924,903(2001) Jackson v Metropolitan Edision 419 U.S 345(1974) fact bound inquiry) there is no more fact finding than a jury trial. Sofarelli v Pinellas County 931 F 2nd 718 723 (11th cir 1991) behavior of private individual does not rise to state action" The subject of[this] case statutory remedy applies under 1983 [every person]who subject or causes to be subjected any citizen to the deprivation of any rights by the constitution. OrderPG.78

(d) Defendants citing United Egg Producers v Standard Brands 44F 3rd 940 ,942(11th Cir 1995)However this is not a case where disputing[commercial parties in positions of equal power [agree in their settlement to bar advertisements disparaging each others dietary products"] The deed restriction at issue here are hardly the products of arms length bargaining between equals it method of take it or leave it". This case was filed with a separate civil right case for handicap. The courts have always protected the right of ownership, human rights ,handicap rights under the civil rights act and free

speech. Whether it is the developer that remain idle and didn't eliminate barrier for the disabled or the association that took no action the interactive process" obligation have been developed primarily in employment discrimination area and fair housing discrimination theory is based on employment discrimination.
Barnett vs US Air Inc 228 F 3rd 1105 (9TH CIR 2000) Craven vs Blue Cross and Blue Shield 214 F 3rd 1011(8th cir 2000) Taylor vs Phoenixville School Dist 184 F 3rd 296 (3d cir1999);Louseged vs Akzo Nobel Inc 178 F3rd 731 (5th Cir 1999);Smith v Midland Brakes Inc 180 F3d 1154 (10 th cir1999)Willis v Conopco 108 F 3rd 282 (11th Cir 1997) However ,for any number of compelling reasons they are equally important in the fair housing context.

(e) Summary Order PG62,68, 80 Robinson vs City of Friendswood 890 F Suppl 616 (S.TX 1995)Marathon vs Maple Grove Condominium Assoc 101 F Suppl 2nd 1041 (N.D Ill2001) Groner vs Golden Gate Apartment 2001 WL 557980*4 (6th cir 5/25/2001) These are cases that handicap accommodation on common area and the cost factor for the housing provider and the jury will make the judgment .Petitioner are the housing provider this is on private property we have the burden of the cost what can the jury tell the petitioner in this case if anything the respondents have required undue hardship against fair housing. These are undue hardship cases if the cost is to great the landlord or housing provider they don't have to provide handicap accommodation if the cost is reasonable or the handicap person will pay cost and upon leaving return it to the perfect state and refusal to accommodate they have violated fair housing. The legal standing for both

Newbold and Janke as handicap has been made by the court and our great hope that they remember handicap accommodation for a companion dog and a support dog for the person with mental disabilities ,court refer to dog run it is boldly stated [it is a bathroom] due to limited ability of Newbold walking a dog. .

Judge cited case in summary order Pg 81San Pedro Hotel Co Inc v City of Los Angeles 159 F3rd 470,475 (9th Cir 1988)(claims brought under the act are to be judged under a "very liberal standard requirement "a plaintiff need not allege that he or she was a victim or she has suffered a 'distinct and palpable injury.

The community violated A or B of the fair housing act discriminatory conduct did they change the rules no ,did they accommodate no ,when they went into the courtroom. The judge later states on (Appendix pg 82 of order fence count plaintiff have not establish that this accommodation even if reasonable, was denied with discriminatory intent. Plaintiff cited Hernando County legal code for fences that this community and developer always overridden the county let forget about private property liability for dog bite or not posting sign will lose a court case and all the other reason there is still a dog to accommodate[handicap] companion for blind person and support for a person with mental disabilities along side the disabled person. There is no evidence that others [being able-bodied]were permitted to build fences in front of their home .These other owner are they handicap, blind developmental disabled with a companion dog .Like the defendants summary judgment (Id 50-70the plaintiff decided to move well that is true without the accommodations and discriminatory attitude there is no choice in the matter. Page 83 of summary judgment order "Moreover plaintiff moved

from their home shortly after their request to build a ramp/deck was denied which may be considered additional evidence that the requested accommodation was necessary to plaintiffs full enjoyment of the property. See first motion to reconsideration Id p.87

This case is now a civil right case for the handicap rights private property rights as filed separately in federal complaint of the old necessity law rule, neutral rule and disparate impact leaving the community events in a civil right case are not set in time they move as event take place. In light of record evidence, the factual determination of reasonableness of conduct is one reserved for jury. Jury don't see record evidence in order to decide reasonableness evidence they must have entire evidence in the courtroom in a civil rights case not allowed by the judge through summary judgment and defendant's motions granted. The judge ruling evidence in case of design of front drawing and blueprints , that defendant states accommodation must be in the rear so what is the point . Jury have no understanding of fair housing laws there are several issues that violate fair housing act extended delay inconsistent reason, not changing rules. The judge statement that the jury make the decision as he doesn't want hear the case again

Asking a jury whether it was the first handicap deck and ramp or the second request handicap deck and ramp in regards personal injury claim .It was conduct, violation and duty of the statue fair housing A or B when they arrived in the courtroom a refusal to accommodate or eliminate barrier ,just created barrier , not change rules or deed restriction, land use restriction ,restricted covenants used on a person with mental disabilities and claim no duty to fair housing in fact , the association

counsel explain why there was nobody seating at his table or appeared in federal court from the association. Plaintiff subpoena all witness the one that called unable to attend , plaintiff sent others home when judge granted all objections we are only hearing detail of construction front accommodation . But the association president a real estate agent allowed as subpoena witness in court claim no duty to fair housing could not say if board member would approve handicap accommodation must be reviewed community association board on witness stand.

(g) In Broadmoor San Clemente Homeowners Assoc v Nelson Cited 30 Cal Rptr 2nd 316(Cal Appeal 4 Dist NoG013975 5/24/1994) Homeowner Association brought suit to enjoin operation of residential care facility in violation of restrictive covenants. N o business or commercial activity shall be maintained or conducted Hernando Beach South Property Owners have the same policy. cited Casa Marie Inc vs Superior of Puerto Rico 752 F Supp1152 (1990)which enjoined enforcement of a restrictive covenant . The court held that Fair housing was violated neutral restrictive covenant to terminate home for handicapped .Rhodes vs Palmetto Pathway Homes (1991) 303 SC 400 SED 2nd a subdivision was subject to restrictive covenant Supreme Court of South Carolina relied on Casa Marie interpretation of restrictive covenants in such a way as prohibit mentally impaired adults to reside in residential community which is contrary to public policies as enunciated by state and federal legislation. When everything is said and done to discriminate through netural public or private land use practices was decided unlawful In this case constitutional issue Scatou v Clifford (1972) 24 Cal App 3rd 46 52 100 Cal Rtpr 779an attempt by state to delete protection afforded by restrictive covenants may

be an impairment of private contractual and property rights under United States Constitution article I section 10. We invited the parties to submit additional briefs on the issue of whether if legislature intended by enactment of government code section 12955.6 to invalidate the pre 1979 exemption as interpreted in Barrettv Lipscomb supro 194 Cal App 3rd 1524,240 Cal reporter 336 there are any constitutional limitation on the power of legislature they gave the right to form only. Therefore arguably the action by the legislature to invalidate the restrictive covenant at issue herein may raise constitutional issues. Petitioners ask what happen to their private property rights and ask for this court could please review this de novo .In our case constitutional issue in infringement of private property right the subject of the contract that has a higher standing but legislature and court have held a superfluous contract in greater standing 42 U.S.C 1981 vs 42 U.S.C 1982,1983 It quite hard to make rules on property that association doesn't have ownership. Association ownership is the common area which should be a separate deed that seller gives the one percent ownership clear title to buyer at the time of selling to avoid these legal case and never again a homeowner with private property right threaten with a lien on their property and increase income for all local government countries and the right to form is provided

(h) Page 79 ,60,64.65Summary order judge cites City of Edmonds vOxford 514 U,S 725,732(1995)Defendants summary judgment pg 66 Oxford House Inc Town of Babylon 819 F suppl 1179 (ED NY 1993) Oxford House Inc vs City Virginia Beach 825 F Suppl 1251 (E.D VA 1993) These are all cases are a result of congress recognized that people with mental disabilities that are so misunderstood and not harmful that they could be blocked by private restrictive covenants and also by

neutral rules and community approval groups that had a discriminatory impact on housing opportunity, If you consider almost all communities are deed restricted community in the State Of Florida this would be a major impact on housing opportunity for handicap that retired in Florida nationwide. The fact that veterans in wheelchairs were the driving force behind fair housing act finding discriminatory impact of opportunity in housing and this community has their meeting in a VFW post with a handicap ramp in front of parking lot it make it hard to understand discriminatory attitude. House Judicial Committee's statement the act is intended to prohibit the application of special land use regulations, restrictive covenants and conditionals that have effect of limiting the ability of such individuals to live in the residence of their choice of communities Fla Civil right section for handicap of fair housing sec 8,9 prohibit terms and conditions and the word permit from this judicial statement.

(i) Anast vs Commonwealth Apartments 956 F Suppl 792 [N.D ILL 1997]Under the Supremacy clause ,the law sometimes mandates changing rules that generally apply to everyone so as to make their burden less onerous on the handicap.

(j)Trafficante v Metropolitan Life Co 409 U.S 205 93 SCT 364,34 Led 2nd 415 [1972]Under Liberal standing requirement of fair housing act the sole requirement of standing is "Article III minima of injury in fact) for the disabled

(k) Marie Inc v Court of Puerto 988 F 2nd 252 (1st cir 1993) once the plaintiff established a prima facie case of disparate impact [leaving the community] again

plaintiff must show pretest evidence not allowed by lower court.[Blueprint only]In legal research you shall not find another deed restricted community that violated private property rights 1983 this is a civil right case for the handicap 1983the only reason we had to go through fair housing handle all housing issues home modification the refusal to allow handicap accommodation and changing deed restriction that violates civil right for handicap section in in our case developmental person a deed restriction is the same as land use restriction or refer to covenants or third party community approved group denial should not be use in a court of law against a person with mental disabilities which is a major problem in this case.PG62,67

(L)(Pg 68 Summary Defendants cited Puliciella Vs Ridley Tp 822 F Suppl 204 (Ed Pa 1993) Much as defendants may wish otherwise wish memo 49-69 neither congress nor the Florida legislature has disenfranchised all handicap living in single family homes from the right to make reasonable modification opinion vacated and stipulations) a township and it zoning hearing board were held not to have violated 42 USC 3604 (f) by refusing to grant an application for a special exception or variance to construct a wheelchair accessible addition to the first floor of a sister's house for benefit of her paraplegic brother In Pulcinella the court reasoned since the sister home was a single family residence owned by her as private individual and since it was not contend that she owned more than three single family homes at one time ,the paraplegic brother could not be compelled her to allow him to make the modification in question because of the exemption in 3604 The court further found that the exemption not only the owner and could not compel the township. Defendants claim this is the same case .What is overlook

in this case is Puliciella private property rights and they violated 3604[opinion reversed in case. All resources , regulations are provided by Health and Family Services whether it legal protection developmental person , budget for judge placement, attorney ,legal agencies and University. Social Security or Ada, or Fair Housing State Offices Commission on Human Relation are a paid agent for HUD and legal fines violations imposed to coverage agency cost , reviewed yearly handle all housing issues for handicap accommodation given at that time a civil right act for handicap alone 760.23 (8) (9(when they were removed from Ada leaving only employee cases These agencies are branches bonded together to function whether it housing ,education transportation, housing in special area. No state may create a disability law that is not greater or equal to ADA .HUD deal with all housing issues. This is why the all equal theory no special treatment for handicap given to the jury was incorrect. Hud require a policies be issue for handicap and review community for a period of time at least according function statements. The community in minutes of meeting were waiting for federal funds to come into the county for a bike path in front of community major city use that money for sidewalk and curbs for handicap it resources non highway for public health.

(m)Parker vs Universidad De Puerto Rico 225 Fed 3rd 1 (1st cir Appeal 2000 Ny)Ada Case # 10 Case 1587 Statutory negligence :Petitioners ask this court to review this issue de novo. Defendants were aware of dangerous condition on premise and risk of delay and extended delay of a daily handicap accommodation in this case and denial of daily handicap accommodation for aesthetic ground has overridden Hernando County building and zoning ;third party inference with

caretaker of a developmental person ; block handicap accommodation with land use restriction time is no issue attitude; choice to act as a landlord then liability are transfer . In this case it is required "to act affirmatively to eliminate barrier that otherwise serve to deny person with disabilities access and not to merely to exercise reasonable care to protect person with disabilities from dangerous condition on premise this is not satisfy the duty merely by exercising reasonable care to protect person with disabilities along with others rather must act affirmatively to eliminate barrier on the premise that would otherwise serve to deny person with disabilities .The claim doesn't convert into traditional negligence action but statutory negligence. Violation of statue is causation alleged and proven by duty of statue .The physical injury is an addition consequences of the violation of that statutory duty which is of a different than a duty of general population." Strict Liability doctrine of res ipsa loquitur the thing speak for itself is actually circumstantial evidence deed restriction .It is a rebuttable presumption alleged and proven that defendants' was negligent which arise upon proof that the instrumentality causing the injury was in the control of defendants [deed restriction]and it is unnecessary for him or her to demonstrate the exact circumstance because the defendants breach his or her duty of care and again speak about Resident Manual in legal file given to petitioner sixty after moving into the community stated names appear Shirley Aiken ,David Sasser Officers for Charles M Sasser Attorney At Law Johnson &Sasser states the duty of officers and the safety , protection, duties of association conduct the business affairs of the association in a professional matter in accordance with the laws of local government, state and federal jurisdictions. There is more chance of

accident without handicap accommodation as in "Parker " plaintiff wheelchair user whose chair tipped over on gravel path it is important for wheelchair flat smooth surface as ramp and small flat deck surrounding main entrance easy access no struggle at the door way for a blind person .In defendants summary judgment never challenged plaintiff need for accommodation or ask for medical report during denial at the time it occurred it can not be used later during summary judgment If one would say full enjoyment of property would that mean the completed fenced yard as given to blind child by Hernando County and Janke had in Chicago present and past.

(n)Haven Realty Corp vs Coleman 455 U.S 363,372,102S.CT 1114,1121,71 LED 2nd214(1982)The Caretaker of the more handicap invariably and needlessly suffer a heavier yoke in life when reasonable accommodations for their wards are denied"

(o) Bani vs Sec Hud ,102 F3rd 1203 ,1207 (11th Cir 1997) "Although the statue provides little guidance beyond [providing for actual damages"] anger embarrassment emotional stress are clearly compensatory injuries under this standard,") However contrary to defendants argument memo pg 92 ,the provision for Actual damages does not foreclose awards for physical damages in fact there is no cap on awards for punitive damages in fair housing cases personal injury and pain and suffering is addition consequences of conduct, the violation of statue there is no reason that these medical bills can not be reimbursed it is stated in Federal

Discrimination procedures and litigation Law Book Compensatory was given for emotional distress and conduct given in punitive damages In this case conduct

is a issue and one of the standard used for accidents reckless driver Defendants motion remove conduct evidence from our case in federal court and cited Ranger Ins v Bal Harbor549So 2nd 1005 main subject conduct term of discrimination in State court, plaintiff named in the case. There is no question that personal injury are in civil right cases ,fair housing has a built in civil section for handicap. There is no question that there has been personal injury due to conduct of denial of accommodation in fair housing cases federal and state .

(o)ADA Under EEOC vs CEC Entertainment ADA case10 # 1593 explain they issues compensatory damages emotional distress punitive damages for conduct most egregious employer for mentally retarded janitor personal injury is a separate addition consequences stemming from the violation of statue.
(p)Young vs Warner Jenkin 8 AD Case 887 Employee work related injury loss of foot Pg 1 Disabled former employee has produced evidence sufficient to raise inference of disability based discrimination despite contention that he has not made showing of disparate treatment where employer now insists that it terminated him solely due to lack of work but he has produced evidence indicating that it offered different explanation at the time of discharge although ultimate significance of shift in employees' position is a matter of dispute ,its inconsistent explanations are enough to support inference of discrimination .A qualified individual with a disability' is an individual with a disability with or without reasonable accommodation can perform the essential function of the employment position that such individual holds or desires 42USC12111(8) it is opposite in fair housing Pg We disagree in Price v S-B Power Tool 75 F3rd 362 ,365 (5 AD case s2771 (8th Cir 1996) cert denied (519 U.S 910],117 SCt 274 [5 AD

cases1728](1996)we noted that '[a]n inference of discrimination may be raised by evidence that a plaintiff was replaced by or treated less favorably than similarly situated employee who are not in the plaintiffs protected class" It does not follow however that evidence of disparate treatment is the exclusive means by which a plaintiff may establish an inference of discrimination

See Miners v Cargill Communications Inc 113 F 3rd 820 ,824 n.7 [6 AD Cases 1229](8 cir 1997)Supreme Court 411 U.S at802 n.13 Mc Donnell Douglas "We have recognized as well that the proof necessary to establish a prima facie case in discrimination is not inflexible and varies somewhat with the specific facts of each case Hindman vs Transkrit Corp145F3rd 986,990-01[77fep cases 126(8th cir1998)

.Furthermore it is well establish that the threshold of proof necessary to establish Rose Mason 133 F3rd 1109-10;Davenport v Riverview Gardens School Dist 30 F3rd 940,944 [65Fep Cases488]8th cir1994)The prima facie burden is not so onerous as, nor should it be conflated with, the ultimate issue of discriminatory action Landon vs Northwest Airlines 72 F3rd 620,624[72 FEP 675 8th cir 1995) see also Williams vs Ford MotorCo 14 F 3rd 1305 1308 (65 FEPCase 1581 8th cir1994) SEE Korbrin vs University 34 F3rd 698 703[65 FEP case 1624 8th cir 1994) '[s]ubstantial changes over the time in the employers' proffered reason for its employment decision support a finding of pretest '.Nevertheless Rothmeier make clear that evidence alone doesn't preclude summary judgment 85 F 3rd 1336-37 young must present evidence that creates a reasonable inference that disability was a determine under summary judgment by retaliating against him for filing

worker compensation claim found for the plaintiff. Ryther v Kare 11,108F 3rd 832 [73 FEP case 373 8th cir 1997]117 SCT2510 [74 FEP cases1440](1997)When the employer produce a non discriminatory reason for its actions ,the prima facie case no longer creates a legal presumption of unlawful discrimination .The elements remain however and if they are accompanied by evidence of pretext and disbelief of the defendants proffered explanation ,they may permit the jury for the plaintiffs. Plaintiff in this case were not allowed pretext evidence.

This is not to say that the plaintiff to succeed simply proving pretext is necessarily enough

.We emphasize that evidence of pretext will not by itself be enough to make a submissable case if it is, standing alone but inconsistent with a reasonable inference of.....Discrimination. Furnco Constr. Corp v Waters 438 U.S 567 577[17 Fep Case1062](1978) thus at least in some cases ,a reasonable inference of discrimination may be drawn through a process of elimination see Nelson vs Bancshares Inc 26 F 3rd 796 801 (64 FEP cases 1799 8th Cir)

(p)Trovato Durost v City of Manchester 992 F Supp493 1997U,SDist Lexis 21541;7AM Disabilities Case(BNA)926 back door are step are significantly more steep, unable to walk, surface not smooth wanted to put a small front paved parking space denial, Fair Housing

(q)U.S v Freer F Supp 864 324 (denial of fair housing caused personal injury ,embarrassment ,distress strain on family unity, loss of enjoyment of property loss of right) Fair Housing

(r)Michigan Protection and Advocacy Service Inc18F .3d 337,342-43 (6th Cir 1994) sale held exempt under provision) Much as defendants might wish otherwise

memo pg 68,neither Congress or Florida Legislature has not disenfranchised all handicapped person living in single family homes from reasonable modification of their own home and private property.

(s)Gladstone Realtors vs Village of B[illegible]lwood 441 U.S 91 ,115 99 SCT 1601 60 LED 2nd 66 (1979) 42USV3604(F) (2) Fla 760.23 (8) Congress obviously recognizes the realities confronting families one or more disabled members The law protects and give rights to sue not only to the handicapped victims of discrimination(family member who often, as this case illustrates, are unable to fend for themselves)but also to the able ,lesser handicapped ,or competent family member who provides care and shelter for less fortunate and who them suffer injury even through the handicapped victim of discrimination
MOTION TO DISMISS CHARLES M SASSER JR ,HERNANDO BEACH SOUTH PROPERTY OWNER ASSN IN JURY TRIAL GRANTED
The old association and new association the same people. The new homeowner association supported the deed restriction and during the entire litigation instead of a homeowner that paid association fees supported the developer conduct and views. The failure to address the issue or reckless indifference doesn't foreclose successor or agent liability
1.Sutton Enterprises vs Santa Clara Const 767 So 2nd 547(Fla 2000) citing

2.Applefield v Commercial Standard Ins CO 176 So 2nd 366,377(Fla 2nd DCA1965)A person business entity has no right to shut his eyes or ears to information. If it is the new association after receive a letter in detail that the victim must start a new application with this approval board

3.Meritor Saving Bank FSB v Vinson 477 U.S 57,72-73 106 SCT 2399 ,2408 ,91 L.ed 2nd 49(1986)(rejecting employers' argument that its existence of a grievance procedure ad policy against discrimination coupled with the victims' failure to invoke the procedure insulted it from liability grievance with the harasser.

4.CF Bernard v Kee Mfg 409So 2nd 1047,1049 Fla 1982) outlining conditions for imposition of successor corporate liability the successor corporate liability doctrine was initially recognized in federal unfair labor practice cases and is now well-established in employment discrimination the same theory fair housing standard for discrimination.

5..Re National Airlines Inc 700 F2nd 695,698-699 (11th Cir1983)(surveying development and recognizing successor liability doctrine)

6.Gardner v Pan American World Airways Inc 464 U.S 933,104 SCt337,78Led 2nd 306 (1983);
7.Local Union No.5741 UMW vs N.L.R.B.865 F2nd 733(6th Cir.1989)(successor to defunct loan union liable)

8. EEoc vs Mac Millan ,Bloedel Container Inc 503 F2nd 1086 (6th Cir 1974)(landmark case applying successor Liability to employment discrimination case);

9.Bates vPacific Martime Assn 744 F2nd 705 (9th Cir.1984);

10.Musikowamba v ESSI,Inc 760 F2nd740 (7th Cir1985)(successor Liability doctrine applies to 1981 claims discussing succeessor liability factors);

11.Wheeler v Snyder 794f2nd1228(7th Cir 1986)(successor liability doctrine applies to title VII case);
Appendix (pg 155)(vi)

12.Redman v Cobb Intern,Inc 23 FSuppl2nd1372 (M.D Fla 1998)restating general successor rules);

13.Preyer v Gulf tank &fabricating Co Inc 826 F Suppl 1389 (ND Fla 1993) discussing development and apply Successor Liability doctrine)

14.Golden State Bottling v NLRB 414 US 168,182 N55,38 Led2nd 388 94 SCt 414 (1973) Supreme Court and this circuit have imposed liable upon successor in order to vindicate important federal statue policies)

15.West wood Community Inc Assn 226 Br 2230 SD Fla 2001 Appeal No 01-144B 11th Cir) DC00-07616CV-DMM and 97-22293 BK CPGH0(fair housing case age discrimination agency liability

16.Burlington Industries Inc vs Ellerth Inc 524 U.S 742 ,754-56 ;118 Sct 2257,2265-66;141 Led Ed 2nd 633 (1998)(noting congress has directed federal court to interpret title VII based on agency principal);
17.Gebserv Lago Vista Indep School Dist 524 U.S 274 283-291 ,118 Sct 1989,1996-2000 141 Led 2nd 277 (1998)(even if common law agency principal did not expressly apply under title IX, school district could still be liable for teacher sexual harassment of student based on deliberate indifference in a face of actual notice of the misconduct .Association given notice

18.Fla 617.303 (1) a member of the association is not authority to act for the association. We filed a separate claim under the civil right act which handicap are titled

which civil rights 1983laws should apply all people are responsible for their own action ;

19.U.S v American Key Bank National Association Lexis 199U.S Dist Lexis 14651 Case 3;97 CV7801 (person can be held personally liable employees and agents , real estate brokers and agents,

20.US v Sea Wind of Marco 893 F Supp1051 employee liable U.S of America vs Popa 187 F3rd 672 personally liable) corporation president doesn't have president corporation veil of protection when personally involved, which is Charles M Sasser Jr,. Corporate is held responsible for agents employee ,officer, Shirley Aiken ,Vice President David Sasser {real estate agents} actions and statements of this profit corporation Melody Merritt of Hernando Bch Inc .and Sea Side Realty of Hernando Bch Inc This is not a large corporation with branches in several city both father and son president and vice president both attorneys .3604 statement and actions, realtors duties , 1983

21.Wyatt vs Cole 504 U.S 158 112 SCT 1827 ,118Led private parties liable under 1983.

22.Forrester vs White 484 U.S 219 108 Sct 538 98 Led 2nd 5559(1998)(the constitutional wrongdoer cannot hide potential personal liability " behind the shield of his representative character.

23.Harlow v Fitzgerald 457 U.S 800,818,102 SCt2727 ,2738,73 Led 2nd 396(1982)representative capacity does not shield him from personal liability for his own constitutional misconduct

24.Richardson vs Mc Knight 521 U.S 399,117 SCt2100 138 Led2nd 540(1997) (prison guard employed in private management company firm not entitled to qualified immunity for very excessive physical restraint)a private constitutional tortfeasor could be said to be greater than that of the government -employee tortfeasor because the former generally has no entitlement to absolute or qualified immunity for his actions.

25.Federal Judge lower court Imposing liability on Charles M Sasser Jr as stated by (Appendix Summary Judgment Order pg 79)by judge can be individually liable and cited City of Chicago vs Matchmaker Real estate Sales Ctr 982 F 2nd 1086 (7th Cir 1992)

26.Oldadeine v City of Birmingham 230 F3rd 1275 1288 (11th cir 2000) (generally bound the doctrine posit that the decision should continue to govern the same issues in subsequent stages in the case by prior appellate decision of the same type of case
(b)Defendants Motion to Dismiss with cited cases for dismissal of Charles M Sasser Jr and Hernando Beach Property Owners Assn in a civil rights case for handicap and Fair Housing case with a ADA disabled person sending the wrong message to the jury and handicap population of the nation as this case will be cited. This is not corporation law, petitioner filed a separate civil right that civil right law personal accountability for constitutional misconduct is a well established principal in civil rights jurisprudence and should be used in the case. Charles M Sasser Jr has a direct real and personal "causal connection" far beyond would clearly not run afoul of Monell and its progency which prohibit 1983 liability based on principles of respondeat superior or without causal connection between defendants and injury to plaintiff.

Monell v Dept of Social Services 436 US 658 98 SCT 2018 (1978) see Bryan County v Brown 520 U.S 397,117 SCT 1382 (1977) Procunier v Navarette 434 U.S 555 98 SCT 855 (1978) recognizing that 1983 has been consistently construed as not intending wholesale revocation of the common -law immunity afforded government officials ") one who intentionally created a rule likely to stifle speech and violate rights doesn't escape liability because he later allegedly gives or transfer to another party authority to undo that rule which continues in effect until repeal conditions are met

Patsy vs Board of Regents 457 U.S 496 102 SCT 2557(1982) exhaustion of remedies is not a prerequisite to suit on Constitutional claim under 1983.Charles M Sasser Jr strong opinion and developer firm and law office has always written association manual ,by laws ,deed restriction , and modification to deed restriction

.If Charles M Sasser Jr a self appointed community leader feel action should be taken as a landlord on private property the petitioner disagree. Whether a polemis rule in tort is used it states that a defendant is guilty of all unforeseen consequences .Dependent superseding act of these deed restriction can account for harm and personal injury.

(c) Miller v Apartment And Homes of NJ Inc cited 646 F 2nd 101(1981A refusal to rent an apartment Pg 112 Federal contribution rules have long governed under civil right Attorney fee Award Act the petitioners doesn't question payment of attorney fees to any attorney for work performed but the amount of fees and lien on case and not able to take this case into a

courtroom within a two week period .It is our understanding that fair housing and civil right act are separate as legal cases and petitioners filed correctly separate cases in the federal complaint but wasn't allowed to have the handicap civil right act case go forward and dismissal of counsel granted and private property right consider under 1983 et al Petitioners asked the lower court to review lien .Petitioners ask for review de novo on lien on case

(d) 42 USC 2651 -&2653 Recovery by Third Party Medical bill State and Federal government past and future hospital and medical bill should be paid in this case asking the federal judge he would not address the issue.

Ranger Ins Co v Bal Harbor Club cited as 549 So 2nd 1005 (Fla 1989)The deed restriction stated that the seller could not convey the property to anyone that was not a member of the Bal Harbor Club, and had more than one fourth Hebrew or Syrian blood expired 1968 however refusal to approve application, Supreme Court of Florida No 70851 August 31,1989 Does the public of Florida prohibit an insured from being indemnified for the a loss resulting from [an intentional]act of religious discrimination? 509So 2nd at 948We have jurisdictions Art V,&3(b)(4) Fla Const. We answer the question in the affirmative and quash the decision of the district court. There is no cap on punitive damaged on fair housing damages according to Federal Discrimination litigation and procedures ,Miller vs Apartment and Homes of Nj 646 F Supp 2nd 101 (1981)it is clear all terms of discrimination has coverage .

The petitioners ask for a review de novo is coverage available for personal injury and federal and state government paid medical bills ? As it the stand victim of personal injury without insurance must wait until a case is proven for insurance coverage in a case of denial of handicap accommodation that resulted in personal injury under fair housing.

(e)Olmstead vs Lc cited 527 US 581 (1999) United States Court of Appeal Eleventh Circuit No 97-8538 writ of certiorari to the Supreme Court June 22,1999No98-536 Argued April 21,1999 Decided June 22,1999 Presidential Order 13217 issued June 18,2001 Olmstead decision require States to place qualified individuals with mental disabilities to recognizes commitment to community base residential community base single family home alternatives living.

There are two community base programs one residing with family member and the other unrelated member residing in community base single family home .In this case Janke was removed from institutional care to family members home base program. If this case Olmstead vs LC need home modification ,if a community using deed restriction and community approval board deny modification the person with mental disabilities must leave the community or must go through fair housing in a federal and state courtroom .

Asking the federal judge about the right of a developmental person responded by stating it doesn't matter this is a fair housing case .This case reviewed under physical disabilities not under person with mental disabilities and their needs. The federal court that are to protect the handicap, ruling against the person with mental disabilities they are facing mandate.

Every court order boldly states profit in this Florida home, our step brother[from another family] momentary interest in the home the court has no idea the loss this has cost each member of the extended family that is independent with their own incomes and supporting their own family member and their own bills .Our step brother work his entire life sold property almost paid for that has doubled in property value for this home in this deed restricted community in Florida in this case facing replacing the property that has double in real estate price again had to take out a new thirty year loan and start all over again first he deduct loss's before he decide a profit .

. Veronica Aguirre step sister[from another family] named guardian [for placement only refer as body only] for Janke whether in institutionalization or other care ,in home care and medical authority because of her being the youngest family member since Newbold is seventy nine year of age and ill and offered her step sister Janke offer to care for her instead of institutionalization .

Newbold and Janke have their own income this is who this case is about ,other family member are just harmed living in the home. Newbold has always been Janke payee and makes sole judgment on concerns about her sister until she is no longer living that is understood by all family member. . In this case petitioners' have gone from caretaker ;to nurse ;to pro se litigants and all duties at one time.

Petitioners' have tried their hardest to tell the courts and the Commission On Human Relation at the {very end] of their case this has become a civil right case for the handicap could petitioners remind in the community the way they were treated.

This case turned one hundred percent a civil rights case as soon as petitioners asked for preliminary injunction for a real estate sign. Fair housing doesn't just mean accommodation as the commission and judge stated it core is based on the fourteenth amendment of the United States Constitution that all person be treated equal which includes handicap the core is based on conduct and the fair housing act can be violated several ways as seen in other cases ,long extension delay and inconsistent reasons, and the civil act that was enacted by the legislature for handicapped person.

If a person is reckless and causes a accident it's conduct that is the base of the claim, if you don't perform the duty of a federal statue it is also conduct. A legal case is not set in time it moves with events in civil right case. Fair housing has a built in civil right act for the protection of rights for handicap to have reasonable accommodation but this case has gone beyond , to the right to live in the community for handicap; the right to form in a Florida deed restricted community,

Arriving in the courtroom already left the community asking to go forward with the civil right act we filed under in the federal complaint denied by the federal court as well as the sign count if a total ban on sign is unconstitutional the petitioners' rights were violated whether the judge refused to accept new evidence ,write final order for appeal before trial with preliminary injunction in conflict or even speak of the issue they were all related issues or pieces of a civil right case. Today we ask again this court to go forward with civil right case for handicap .Appellants question family rights.

The federal courts or the jury have no understanding how this case has destroy and the destruction this case has caused a handicap family member and other family members their entire life that petitioners were not bothering anybody in the community asking for front handicap accommodation that they were paying for , on their own private property.

The appellant asked the lower court who gave the right for this community to pass judgment on handicap accommodation and in the worse case for a blind and severe developmental person without expertise or right whether its medical or handicapped architectural background and to apply terms and conditions .The Appellant has asked what is the law or rule that states the community has a right to say where a handicapped person can be on our private property. Appellants would

have first tested accommodation and would hardly design and improve accommodation to not be a selling feature of the home .Appellant have a long history of many years in a home due to the fact it is hard to move a blind severe developmental person who has a long life span . It is clear as stated on summary judgment dated January 31,2001 Id p.56 I a request for an accommodation or modification is reasonable only if it does not require a fundamental alteration in the nature of deed restriction or undermine them if it wasn't reasonable it wouldn't have been approved this pretext of front drawing and blueprint in a courtroom with the community requirement of rear placement was futile and pretext "Sadly this family was forced to leave the community again petitioner states they were unable to live in a community because of denial of accommodation and discriminatory attitude toward handicap that put property values ahead of human rights .
[Copies of legal cases and Statues required in Eleventh Circuit Record Room other case cited for plaintiff through legal file and Plaintiff Opposition to Summary Judgment, Opposition to Motion to Dismiss, copies of other legal cases cited in pages of the latest Federal discrimination litigation and Procedures book law Statement of Proceeding in Affidavit form, dispositions the amount of copies required by court provided :]